

October 5, 1998
Volume I

Multi-Page™

Deposition of -Clifford H. Goldsmith
Mildred Richardson vs. Philip Morris, Inc.

1

Mildred C. Richardson)
et al.,) In the
Plaintiff) Circuit Court
vs.) For
Philip Morris, Incorporated,) Baltimore City
et al.,)
Defendant) Case No.:
) 96145050/CE212596
) VOLUME I

Deposition of CLIFFORD H. GOLDSMITH,
taken on Monday, October 5, 1998 at 10:02 a.m.,
at the law offices of Arnold & Porter, 399 Park
Avenue, New York, New York 10022 before E. Duane
Smith, RPR-CRR, Notary Public.

Reported by:
E. Duane Smith, RPR-CRR

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17 On Behalf of the Plaintiff
18
19
20
21

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1 Q. When did you retain personal counsel?
2 A. Oh, I would say a few weeks ago.
3 Q. Are you paying for personal counsel?
4 A. No. I'm not.
5 Q. Who is paying for it?
6 A. Philip Morris is paying for it.
7 Q. Was it recommended to you that you do
8 retain personal counsel?
9 A. Yes.
10 Q. Who made that recommendation?
11 A. My lawyer.
12 Q. Who was your lawyer?
13 A. Philip Morris' lawyer.
14 Q. Who was that?
15 A. I forgot his name. I think it was --
16 I'm afraid I can't give you his name right now.
17 Q. An in-house attorney?
18 A. Yes.
19 Q. Mr. Wall?
20 A. Yes. That's right.
21 VIDEO OPERATOR: I'm sorry to

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1 APPEARANCES (CONTINUED)
2 DONNE J. MAUNNEY, ESQUIRE
3 MURRAY GARNICK, ESQUIRE
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14 New York, New York 10110
15 (212) 997-7400
16 On Behalf of the Witness
17 Clifford H. Goldsmith
18 Also present:
19 John Bernstein, Videographer
20

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1 interrupt. Mr. Goldsmith, you are not really
2 coming through. I think your coat is covering
3 your microphone.
4 THE WITNESS: How about that.
5 Q. Just so we were clear, Mr. Goldsmith,
6 as I said today, there was some problem with your
7 voice level.
8 You have told us that you are
9 represented by personal counsel?
10 A. Yes. I am.
11 Q. Your personal counsel is being paid by
12 Philip Morris?
13 A. That's correct.
14 Q. That it was recommended to you by
15 in-house counsel at Phillip Morris, Mr. Wall, that
16 you go out and retain personal counsel; is that
17 correct?
18 A. That's correct.
19 Q. You did so two weeks ago?
20 A. I don't -- no, a little more than that.
21 Q. You know that Mr. Wall, his deposition

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1 PROCEEDINGS
2 Whereupon,--
3 VIDEO OPERATOR: We are on the record
4 and the time is 10:02 a.m. My name is John
5 Bernstein, videographer for Certified Video
6 Productions, Inc., 132 Franklin Corner Road,
7 Lawrenceville, New Jersey.
8 Will the court reporter please swear
9 the witness?
10 CLIFFORD GOLDSMITH,
11 being first duly sworn to tell the truth, the
12 whole truth, and nothing but the truth, testified
13 as follows:
14 EXAMINATION BY MR. EDELL:
15 Q. Mr. Goldsmith, my name is Marc Edell.
16 You are here pursuant to a subpoena, and I see
17 that you have a number of attorneys flanking you
18 to your right and left.
19 Have you retained personal counsel to
20 represent you with respect to this proceeding?
21 A. Yes. I have.

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1 was taken in this matter?
2 A. No. I do not.
3 Q. Did he tell you why you should go and
4 retain personal counsel?
5 A. No.
6 Q. He just called you up on the phone and
7 said, Mr. Goldsmith?
8 A. I just felt it was better to have
9 personal counsel.
10 Q. In the subpoena that was served on you,
11 you were asked to bring certain documents.
12 A. There was no subpoena served on me.
13 Q. No subpoena served on you. Pursuant to
14 a deposition notice?
15 A. I did not get a deposition notice.
16 Q. No one gave you that?
17 A. No.
18 Q. Mr. Wall did not discuss it with you?
19 A. No, nobody gave me any deposition
20 notice.
21 Q. So no one told you that you were

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1 requested to bring certain documentation?

2 A. No.

3 Q. Who made arrangements for your
4 attending this deposition?

5 A. Mr. Hafetz and Mr. Wall, no, Mr. Hafetz
6 actually made the arrangements.

7 Q. He didn't tell you there was a
8 deposition notice asking you to produce
9 documents?

10 A. No. He did not.

11 MR. EDELL: You didn't receive a copy,
12 sir?

13 MR. HAFETZ: I think Philip Morris has a
14 copy.

15 MR. GARNICK: You might want to ask him
16 if he has seen a schedule of documents to be
17 produced.

18 MR. EDELL: I have no way of defining
19 it. We sent a deposition notice which we've
20 marked as Plaintiff's Exhibit 14108, and
21 Mr. Garnick is trying to help us out, I believe.

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1 time I was working at Philip Morris, I might have
2 had some of these documents, but not since I
3 ceased working there.

4 Q. You don't remember whether you have
5 documents related to the Council for Tobacco
6 Research, you don't remember having documents
7 relating to the Tobacco Institute?

8 A. I don't recollect exactly what kinds of
9 documents I had. I have no idea. It is 14 years
10 ago.

11 Q. You do know what the Council for
12 Tobacco Research is?

13 A. Yes, I do.

14 Q. You do know what the Tobacco Institute
15 was?

16 A. Yes, I do.

17 Q. You remember attending meetings at both
18 of those entities, correct?

19 A. Would you repeat that, please?

20 Q. You remember attending meetings at the
21 Council for Tobacco Research; is that correct?

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1 by referring us to the schedule of documents
2 which appears at page three, Mr. Goldsmith.
3 Did you see that schedule of
4 documents?

5 A. I have no such documents. I am
6 responding to number one.

7 Q. Let me ask you first: Did you see this
8 schedule?

9 A. No, I did not see this.

10 Q. No one discussed it with you?

11 A. No.

12 MR. EDELL: I would like some response
13 from either his personal counsel or counsel for
14 Philip Morris as to why the schedule of documents
15 requested in the deposition notice to this
16 witness was not gone through with the witness in
17 advance of the deposition.

18 MR. GARNICK: Mr. Edell, two points.

19 First, I am functioning today both as counsel for
20 Philip Morris and for Mr. Goldsmith as
21 Mr. Goldsmith's personal counsel. I wanted to

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1 A. Yes.
2 Q. You remember attending meetings at the
3 Tobacco Institute, correct?

4 A. Yes.

5 Q. You were on the board of directors of
6 the Council for Tobacco Research?

7 A. For a certain period of time only, and
8 I don't recollect for how long.

9 Q. I'm not going to talk with you on that
10 point, but you were a member of the board of
11 directors?

12 A. I think I was.

13 Q. You did attend board meetings of that
14 entity, correct?

15 A. Yes, I did.

16 Q. You participated in decision making for
17 the Council for Tobacco Research, correct?

18 A. As pertained to budgets and matters of
19 that nature, yes.

20 Q. You also made decisions with respect to
21 hiring of the administrative people and the

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1 correct that point.

2 Second, we have gone through the
3 substance of our schedule with Mr. Goldsmith.

4 MR. EDELL: So he is not testifying
5 correctly, that's your position?

6 MR. GARNICK: No. That is not my
7 position. I think you asked him if he has read
8 that schedule.

9 MR. EDELL: And did anybody also
10 discuss that with you. He said no to that
11 question also.

12 MR. GARNICK: I don't know if he read it
13 or gone through it in a way that he would
14 recognize it as discussing that particular
15 schedule. Why don't you go through the requests?

16 A. I just have none of these papers in my
17 possession.

18 Q. Did you at any point in time have
19 documents that were responsive to the schedule in
20 your possession?

21 A. I don't recollect whether during at the

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1 scientific director for the Council for Tobacco
2 Research, correct?

3 A. I don't recollect that.

4 Q. You don't remember that being part of
5 your responsibilities, sir?

6 A. No.

7 Q. Why don't you tell us what you remember
8 your responsibilities were at the Council for
9 Tobacco Research?

10 A. I simply remember attending meetings
11 and hearing reports and discussing budgets.

12 Q. That's all you remember?

13 A. That's all I remember.

14 Q. You don't remember any discussions
15 respecting appointment of different members,
16 administrative personnel at the Council for
17 Tobacco Research, correct?

18 A. No. I do.

19 Q. Do you remember the issue of cigarette
20 smoking and health being discussed at any of the
21 board meetings?

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1 A. That's what CDR was all about.
2 Q. About cigarette smoking and health?
3 A. That's correct.
4 Q. Was it about public relations?
5 A. I don't remember public relations being
6 part of it.
7 Q. You don't remember that?
8 A. No, I do not.
9 Q. As a matter of fact, when you were
10 interviewed by one of your lawyers, Mr. Allender,
11 you remember Mr. Allender from Shook, Hardy &
12 Bacon?
13 A. No, I do not.
14 Q. You discussed with him an interview you
15 had with Alix Freedman from the Wall Street
16 Journal, you remember that?
17 A. No, I do not.
18 Q. You don't remember that either?
19 A. I do not. I remember meeting Alix
20 Freedman after I retired.
21 Q. Correct. You remember that she was a

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1 that correct, sir?
2 A. Yes, It is.
3 MR. GARNICK: Let me interrupt for just
4 a moment. Philip Morris does object to the use
5 of this document on the grounds of
6 attorney-client privilege.
7 We are willing to go ahead as we did in
8 the other depositions, pursuant to the
9 stipulation that our willingness to go ahead will
10 not be construed as a waiver.
11 I think that is the same stipulation
12 that was in place in connection with the other
13 depositions. Is that agreeable?
14 MR. EDELL: If in fact you are entering
15 into the same stipulation we did in the Weissman
16 deposition, which I was present, that's fine with
17 me.
18 MR. GARNICK: Okay. Thank you.
19 Q. The subject of this memorandum,
20 Mr. Goldsmith, is Alix Freedman interview of
21 Cliff Goldsmith, is that correct?

1 reporter for the Wall Street Journal?
2 A. Yes, I remember that.
3 Q. You remember she asked you questions
4 about the Council for Tobacco Research?
5 A. No, I don't remember that.
6 Q. Do you remember what you talked about
7 with her?
8 A. No, I really don't.
9 Q. How many times within the last decade
10 have you been interviewed by a newspaper?
11 A. I don't remember any interviews by
12 newspapers. I don't remember whether I --
13 Q. By a reporter, I'm sorry, for a
14 newspaper?
15 A. I don't even remember that when I met
16 Ms. Freedman that it was an interview for a
17 newspaper. I just remember her coming to my
18 office and talking to me, but I, that's the only
19 time I remember talking to any reporter.
20 Q. So you can only remember once in the
21 last decade, for example, that you met with a

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1 Clifford Goldsmith.
2 Q. It says Cliff.
3 A. Yes. That's an abbreviation I don't
4 care for.
5 Q. I'm just reading what's on the
6 document?
7 A. I'm only mentioning it for the record.
8 Q. I will only call you Mr. Goldsmith, not
9 Clifford.
10 A. Well, you can call me Clifford, that
11 would be all right, too.
12 Q. Am I correct though that the words used
13 in the subject of the memorandum is "Alix
14 Freedman interview of Cliff Goldsmith"?

15 A. Yes, I understand that.
16 Q. Would you please read the document and
17 see if it refreshes your memory that you did, in
18 fact, discuss with Ms. Freedman the issue of the
19 Council for Tobacco Research and your knowledge
20 concerning that entity?
21 A. You just want me to read the one you

1 reporter to discuss your work at the Council for
2 Tobacco Research?
3 A. I don't remember discussing that work
4 with her.
5 Q. Let me see if I can refresh your
6 memory. P-13532.
7 I will show you a document marked as
8 Plaintiff's Exhibit 13532.
9 Here you go, counsel, that's a copy for
10 you.
11 You recognize that to be the letterhead
12 of Phillip Morris, Mr. Goldsmith?
13 A. Yes, I do.
14 Q. It indicates on the first page of the
15 document that it is from Chuck Wall, that's the
16 same in-house lawyer that told you to retain
17 outside counsel, correct, personal counsel?
18 A. Suggested it.
19 Q. Suggested it, right.
20 A. Yes.
21 Q. And it is dated October 20, 1992. Is

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1 quoted?
2 Q. Yes.
3 A. I don't remember any more than I told
4 you. I really have no recollection of what she
5 said and what I said to her.
6 Q. This doesn't jog your memory?
7 A. No, It does not.
8 Q. You certainly remember speaking with
9 her, correct?
10 A. I do remember speaking with her.
11 Q. You don't remember telling her that you
12 didn't know who Len Zahn was?
13 A. No, I don't remember.
14 Q. You know who Len Zahn was?
15 A. I don't remember who Len Zahn was.
16 Q. You don't remember that he was public
17 relations counsel for the Council for Tobacco
18 Research?
19 A. Mr. Edell, you have to understand. It
20 is many years ago that all this took place. I'm
21 not being evasive. I just don't remember.

5
23
6
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7

1 Q. The name doesn't --
2 A. And I'm 79 years old. Your memory is
3 not all that great at that stage of the game.
4 Q. I don't know you, you don't know me,
5 sir?
6 A. I want you to understand, I'm not being
7 evasive. When I say I don't remember, I don't
8 understand, that is a fact.
9 Q. So you have no reason then to take
10 exception with anything that is recorded in this
11 memorandum?
12 A. No. I do not.
13 Q. Right?
14 A. No. I don't remember it.
15 Q. You can only assume it is correct, if
16 he recorded it this way?
17 A. No. I do not assume it is correct.
18 Q. You have any reason to question the
19 accuracy of this memorandum?
20 A. I don't remember it.
21 Q. I'm asking you whether or not you have

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1 Q. Is this reconstituted tobacco?
2 A. Yes. That's right.
3 Q. You say "made of smaller particles"
4 where did those particles come from?
5 A. They were by-products of production.
6 Q. When you say "by-products of
7 production", what do you mean?
8 A. It means, say, that if a machine, small
9 pieces would fall out during the manufacturing
10 process and you take those small pieces and
11 recombine them into a sheet.
12 Q. These would be, in other words, during
13 the manufacturing process, you use leaf tobacco,
14 correct?
15 A. Right.
16 Q. And during that process, there is a
17 residual that is left behind, small pieces of the
18 leaf?
19 A. Right.
20 Q. That don't make it into the cigarette,
21 right?

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1 any reason to question the accuracy of the
2 memorandum?
3 A. I don't have a reason to question,
4 excuse me, a reason to question its accuracy or
5 inaccuracy. I don't know.
6 Q. Okay. Do you remember when you first
7 joined Phillip Morris?
8 A. Yes.
9 Q. When did you join Phillip Morris?
10 A. I believe it was in 1954.
11 Q. And do you remember what your
12 responsibilities were in 1954?
13 A. I was in charge of tobacco sheet.
14 Q. How many years ago was that?
15 A. I guess at this stage of the game, 43
16 years ago.
17 Q. 45 years ago. And where were you
18 located 45 years ago?
19 A. In New York City.
20 Q. Where was your office?
21 A. In New York City.

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1 A. Yes.
2 Q. They end up where, on the machines on
3 the floor?
4 A. Everywhere.
5 Q. Everywhere. And what they do is sweep
6 that together, correct?
7 A. I don't know what you mean, they
8 collect it.
9 Q. How do they collect it off the floor?
10 A. Well, they collect it -- it is in the
11 on the floor, usually in the machine.
12 Q. It is also on the floor?
13 A. Could have been some on the floor.
14 Q. So how do they --
15 A. I don't think what's on the floor was
16 used in the sheet necessarily at all.
17 Q. Do you remember that?
18 A. No. I don't remember the details of
19 it. But I tell you that most of it was pieces
20 that were on the machine.
21 Q. You remember that specifically?

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1 Q. Do you remember the address?
2 A. Yes. It was 100 Park Avenue.
3 Q. What floor were you on?
4 A. I think it was the fourth floor.
5 Q. Do you remember the names of any of the
6 individuals who had offices near you?
7 A. Near me at that time, no, I don't
8 remember.
9 Q. And what precisely were your
10 responsibilities?
11 A. I was in charge of deciding what kind
12 of tobacco sheet the company wanted to use and
13 then to build a plant that would manufacture that
14 sheet.
15 Q. When you say "what kind of sheet" what
16 do you mean, sir?
17 A. Well, there was a process that would
18 combine small particles of tobacco into a sheet
19 and then that sheet would be cut to be used in
20 addition to tobacco.
21 It was basically made of tobacco.

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1 A. I do remember that specifically.
2 Q. You were working in the plants at the
3 time?
4 A. No. I was not.
5 Q. But you remember it specifically?
6 A. Well, I was a plant manager before of a
7 different plant.
8 Q. You were at Benson & Hedges, with
9 Mr. Cullman, right?
10 A. That's correct.
11 Q. You started there in 1945?
12 A. That's correct.
13 Q. Where was that located?
14 A. On Water Street in New York and later
15 on in Yonkers.
16 Q. What they would do is take all of this
17 left over, these leftover pieces and sort of
18 press them together, correct?
19 A. It is a little more complicated than
20 that.
21 Q. Well then tell us exactly what they

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1 did.		1 correct?
2 A. The process involved, in the beginning, 3 it involved laying down a substrate, grinding up 4 the pieces of tobacco into a uniform size, and 5 then applying them to that substrate.		2 A. Right.
6 At a later time, the process was 7 changed so that there would be a solution was 8 formed of the fine pieces of tobacco, along with 9 a binder, and it would be cast on a sheet.		3 Q. And it says 1.1 percent phosphorus, is 4 that correct, under BL?
10 Q. There were other, I don't know how to 11 describe it, additives, that were used in the 12 reconstituted tobacco; is that correct?		5 A. Yes.
13 A. Yes.		6 Q. These are sheets used in cigarettes 7 manufactured by Philip Morris, correct?
14 Q. Will you tell the jury some of the 15 additives that you recall being included in this 16 sheet of whatever the residual tobacco was?		8 A. That's correct.
17 MR. HAFETZ: Excuse me. What time 18 frame?		9 Q. Then it also has a percentage for 10 ammonia, is that correct?
19 MR. EDELL: If you can tell us from 20 1954 forward. If it changed each year, please 21 tell us that also.		11 A. Yes.
	Page 27	Page 30
1 THE WITNESS: I certainly wouldn't 2 remember how it change each year from 1954, 3 Mr. EDELL.		1 you answer the question.
4 MR. EDELL: I'm responding to your 5 attorney's question.		2 MR. HAFETZ: If he understands it.
6 A. I understand that, you are asking me 7 for some highly technical information and trying 8 to answer it properly, it is not all that easy, 9 but I tell you, the final product that we ended 10 up with, we made the binder by using diammonium 11 phosphate to free the pectins in the stems and 12 mixed that with the tobacco, that's right.		3 MR. EDELL: Are you suggesting that he 4 shouldn't understand it?
13 There was some flavorings used but I 14 can't tell you what they were because I don't 15 remember them.		5 MR. HAFETZ: I'm not suggesting 6 anything. I'm objecting to the form.
16 Q. Is that your recollection, that at 17 least that -- what was it?		7 Q. You don't have to say it. Go ahead, 8 Mr. Goldsmith?
18 A. Diammonium phosphate.		9 A. Will you repeat the question?
19 Q. That has been in there as long as you 20 remember?		10 Q. Yes. Are you aware of any research 11 performed by either you individually or at Phillip 12 Morris to determine what by-products were given 13 off when the ammonia was burned as a cigarette 14 was smoked?
21 A. That is correct.		15 A. I don't recollect any.
	Page 28	Page 31
1 Q. Do you recall ammonia being added?		1 Q. Are you sophisticated when it comes to 2 the by-products of tobacco smoke?
2 A. Diammonium phosphate is ammonia. There 3 is ammonia in diammonium phosphate. If you ask 4 me for the exact chemistry, I can't explain it.		3 A. No. I'm not sophisticated.
5 But the ammonia in the tobacco sheet 6 comes from the diammonium phosphate.		4 Q. Are you sophisticated with respect to 5 the issue of cigarette smoking and health?
7 Q. Okay. I'm going to show you a 8 document, maybe you can help us out with this, 9 it's Plaintiff's Exhibit 13906.		6 A. Would you define that for me?
10 It is a memorandum that appears to be 11 from Dr. Wakeham to Mr. C.H. Goldsmith?		7 Q. Well, cigarette smoking and health may 8 be sort of a bad way to phrase it. Cigarette 9 smoking and disease. Are you familiar with the 10 relationship between cigarette smoking and 11 disease?
12 A. That's me.		12 A. Well, I am familiar with the various 13 claims in the matter.
13 Q. That's you, February 28, 1967. Is 14 that the date of it, sir?		14 Q. So you are familiar with the --
15 A. Yes.		15 A. But I'm not a scientist in the area.
16 Q. Says additives to DAP-BL and DAP-RBC. 17 What do those initials mean?		16 Q. In other words, you don't hold yourself 17 out to be knowledgeable like Dr. Wakeham, when it 18 comes to the relationship between cigarette 19 smoking and disease?
18 A. One is BL for blended leaf and the 19 other one is the process which is the cast 20 process.		20 A. That's right.
21 Q. This is reconstituted tobacco,		21 Q. Is that correct? You would defer to

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1 Dr. Wakeham on that issue?

2 A. I would look at his opinion. I would,
3 when you say "defer to him" I didn't believe that
4 necessarily everything Dr. Wakeham told me was
5 true.

6 Q. In other words, if he made a statement
7 regarding the relationship between cigarette
8 smoking and disease, you might not accept that,
9 even though you don't know a fraction of what he
10 knows about the subject?

11 A. That's correct.

12 Q. So if he thought that there was a
13 relationship between cigarette smoking and lung
14 cancer, for example, you might disagree with
15 that, correct?

16 A. I might.

17 Q. Even though you don't know a fraction
18 of what he knows; Is that correct?

19 MR. HAFETZ: Objection to form.

20 Q. Is that correct, sir, about the
21 subject?

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1 A. In 1954, I must have heard the term,
2 but none was done by Philip Morris at that time,
3 to my knowledge.

4 Q. As a matter of fact, none was done by
5 Phillip Morris in-house for a long period of
6 sometime; is that correct?

7 MR. GARNICK: Objection to form.

8 MR. EDELL: Sir?

9 THE WITNESS: Would you repeat the
10 question, please?

11 Q. In fact, there was no biological
12 research done by Phillip Morris for a long period
13 of time, correct?

14 MR. GARNICK: Objection to form.

15 A. What do you call long?

16 Q. Several decades?

17 A. I can't. I think you would need to be
18 more specific. I don't know about several
19 decades.

20 Q. Sir, you are aware of the agreement
21 within the industry, among the tobacco companies

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1 not to do biological research, at least in-house?

2 A. No. I'm not.

3 Q. You weren't aware of that?

4 MR. HAFETZ: Objection.

5 MR. GARNICK: Objection.

6 Q. You weren't aware of that?

7 A. No.

8 Q. No one told you about that?

9 A. No.

10 Q. Never heard it.

11 MR. HAFETZ: Continuing objection to
12 this line of questioning.

13 Q. Sir, you never heard it?

14 A. I heard it from my counsel.

15 MR. GARNICK: Objection.

16 MR. HAFETZ: Objection.

17 Q. What did he tell you?

18 MR. HAFETZ: Objection.

19 MR. EDELL: He just decided to tell us,
20 sir. He has waived whatever privilege now that he

21 told us that he heard it from you.

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1 MR. HAFETZ: Objection. Directing him

2 not to answer.

3 MR. EDELL: On what basis?

4 MR. HAFETZ: Attorney-client privilege.

5 Q. You remember that at several points in
6 time, Dr. Wakeham -- just so the jury
7 understands, Dr. Wakeham was the head of research
8 and development for Philip Morris?

9 A. Yes. He was.

10 Q. For how many years?

11 A. I don't remember.

12 Q. Was he there since you joined the
13 company? Was he there when you joined the
14 company?

15 A. I think he was, yes.

16 Q. And was he there when you left the
17 company?

18 A. No.

19 Q. When did he leave?

20 A. I don't remember the year.

21 Q. Was he there in the seventies?

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1 A. I would think so.
2 Q. Do you know that he was there?
3 A. I said I would think so.
4 Q. We know that he was there in the
5 fifties, we know that he was there in the
6 sixties, we know that he was there in the
7 seventies, correct?
8 A. I think so.
9 Q. And he certainly was the person in
10 research and development who would be asking what
11 type of research they might be performing and
12 whether they would be receiving funding from the
13 corporation for that research, correct?
14 A. I don't understand your question. By
15 "that research" what are you talking about?
16 Q. Biological research, sir, the same
17 thing that your lawyer told you about, biological
18 research.
19 MR. HAFETZ: Objection.
20 THE WITNESS: Would you restate the
21 question, please?

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1 MR. EDELL: Yes.
2 Q. Do you remember that from time to time
3 Dr. Wakeham would approach the board of directors
4 and various executives and officers of Philip
5 Morris, to ask that he be permitted to perform
6 biological research?
7 A. Yes.
8 Q. And that in each instance, his requests
9 were rejected, do you remember that?
10 A. No.
11 Q. You don't remember that it was
12 concluded that to do biological research in-house
13 would be too risky for Philip Morris?
14 A. No.
15 Q. You don't remember that?
16 A. No.
17 Q. Would you tell the jury who Joseph
18 Cullman is?
19 A. He is the chairman of Philip Morris.
20 Q. That is Joseph Cullman, III?
21 A. That's right.

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1 Q. You worked with him for how many
2 years?
3 A. Oh, I guess close to 30 years, over 30
4 years, something like that.
5 Q. And he was, basically, the person who
6 ran Philip Morris for a long time, didn't he?
7 A. Yes. He did.
8 Q. Certainly in the 1960's, he was the one
9 who was calling the shots, correct?
10 A. Correct.
11 Q. And what was your position with Philip
12 Morris in 1969?
13 A. I was in charge of operations.
14 Q. Were you a corporate officer?
15 A. Yes. I was.
16 Q. Were you a member of the board of
17 directors?
18 A. I think I was.
19 Q. Would you have any reason to question
20 that now?
21 A. I don't remember exactly when I joined

1 the board.
2 Q. Were you on the board of directors in
3 the sixties?
4 A. I think I was. As I said, I don't
5 remember the exact date.
6 Q. Let me see if we can do this in a way
7 that we can refresh your memory.
8 Did you review any documents preparing
9 for this deposition?
10 A. I didn't review them.
11 Q. They were discussed with you, though?
12 A. Yes.
13 Q. Your attorney discussed certain
14 documents with you?
15 A. Yes, he did.
16 Q. Told you that you might have to answer
17 questions about those documents?
18 A. That's correct.
19 Q. Suggested what you might be able to
20 respond to in response to questions like that?
21 A. No.

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1 Q. When you say your attorney, you are
2 talking about who, sir?
3 A. Both my counsel.
4 Q. Who are they?
5 A. Mr. Hafetz.
6 Q. Who else, Mr. Garnick?
7 A. Yes.
8 Q. They were present at the time you were
9 being prepared for this proceeding?
10 A. Yes. They were.
11 Q. I'm going to show you the first
12 document which is Plaintiff's Exhibit 13366.
13 This is a memorandum from Dr. Wakeham who we have
14 been discussing, right?
15 A. Yes.
16 Q. The date of it -- here you go, sir.
17 The date of it is what, November --
18 A. 1968.
19 Q. What's the month, sir, the date?
20 A. November 12, 1968.
21 Q. And it is a memorandum directed to you,

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1 Page 40
1 C. H. Goldsmith, correct?
2 A. Yes, sir.
3 Q. The subject is need for biological
4 research by Philip Morris Research and
5 Development?
6 A. Yes.
7 Q. Did I read that correctly, sir?
8 A. Yes, sir.
9 Q. What was it in your responsibilities
10 that would bring Dr. Wakeham to send such a
11 memorandum to you?
12 A. I was chief of operations.
13 Q. And what relationship did that chief of
14 operations have to do with research and
15 development in the area of biological research?
16 A. Well, I was Dr. Wakeham's boss.
17 Q. Okay. So in the normal course, he
18 would be sending you a memorandum if he wanted to
19 do certain types of research; is that correct?
20 A. He might. He wouldn't send me a
21 memorandum every day.

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1 Q. Well, you would be the person though
2 who he would be addressing a memorandum like this
3 to?
4 A. Yes, he would.
5 Q. If he wanted to perform biological
6 research, correct?
7 A. Yes. He would.
8 Q. Would you take your time and review
9 this memorandum, sir. Have you reviewed this
10 previously?
11 A. No. Yes, sir.
12 Q. Now, this is a memorandum to you, as we
13 discussed from Dr. Wakeham, correct?
14 A. Correct.
15 Q. He is asking for permission from you to
16 do biological research, correct?
16 A. As I read this memorandum, he is
18 pointing out the need for it. He is not being
19 specific and saying what he wants to do at that
20 particular time. But, you know, I skimmed it,
21 but he pointed out the need for it.

1 Q. And on the second page of the document,
2 you still have it in front of you, sir?
3 A. Yes.
4 Q. The third full paragraph?
5 A. Right.
6 Q. You see where it says: "We have reason
7 to believe that in spite of previous arrangements
8 within the tobacco industry, at least some of the
9 major companies have been increasing biological
10 studies within their own facilities."
11 A. Correct.
12 Q. You see that?
13 A. Uh-huh.
14 Q. What previous arrangements do you
15 believe Dr. Wakeham to be referring to?
16 A. I don't recollect any such previous
17 arrangements. I don't know what he is referring
18 to.
19 Q. You have no idea; is that correct?
20 A. No.
21 Q. Are you aware that there is a criminal

1 investigation being conducted into the tobacco
2 industry?
3 A. Vaguely.
4 Q. Vaguely?
5 A. Yes.
6 Q. You know that the Federal Government is
7 looking into certain allegations relating to the
8 Council for Tobacco Research and Special
9 Projects?
10 A. No. I didn't know those details.
11 Q. Your lawyer didn't tell you about
12 that?
13 MR. HAFETZ: Objection.
14 Q. He did not?
15 MR. HAFETZ: Objection. Direct him know
16 to answer.
17 Q. How did you become aware that there was
18 a criminal investigation?
19 A. I think I read it in the newspapers or
20 on the Internet. I'm not sure.
21 Q. Have you had any contact with anybody

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1 from the Federal Government regarding their
2 investigation?
3 A. No.
4 Q. Do you remember what you did after you
5 received this memo from Dr. Wakeham in 1968,
6 asking for or suggesting at least that biological
7 research be started?
8 A. No.
9 MR. HAFETZ: Object. Give me a chance
10 to object.
11 Q. You don't remember what you did?
12 A. No. It is 30 years ago, Mr. Edell.
13 Q. That's why I am trying to jog your
14 memory, sir.
15 A. I know. But still 30 years ago, it is
16 hard to jog.
17 Q. Well, I'm going to do my best, all
18 right?
19 A. Yes, sir.
20 Q. Let me show you another memorandum that
21 was sent to you. This is dated November 15. It

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1 seems to be a similar version of the November 12
2 document.
3 MR. HAFETZ: Will you just note the year
4 on that? You said November 15. What year?
5 THE WITNESS: 1968.
6 MR. EDELL: 1968. It is going to be
7 part of the record, counsel.
8 MR. HAFETZ: Okay.
9 MR. EDELL: I understand what you want
10 to do, but it is part of the record, so there
11 won't be any question of what the date is. All
12 the exhibits will be part of the record.
13 A. They are practically identical memos, I
14 don't quite understand. One is dated November 12
15 and the other one is dated November 15. A lot of
16 the things he fails to mention in one he mentions
17 in the other. Is there any particular reason why
18 you wished for me to read it again?
19 Q. Just to see if it jogs your memory any
20 more.
21 A. No. It doesn't.

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1 Q. It doesn't. Okay. We'll keep working
2 on it. I will show you a document which we have
3 marked as Plaintiff's Exhibit 13941.
4 This is several months after the
5 earlier memorandum. Correct?
6 A. Yes.
7 Q. And, again, it is another memorandum
8 from Dr. Wakeham to Mr. Goldsmith, correct?
9 A. Yes.
10 Q. Proposal for biological research
11 program?
12 A. Right.
13 Q. Updated from July 1, 1969. That is
14 what it says, sir?
15 A. Yes. It does.
16 Q. And then it says under summary we have
17 in a previous memorandum dated November 15, 1968?
18 A. Right. I read it.
19 Q. We have discussed that November 15
20 memorandum already, correct?
21 A. Right.

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1 Q. And that November 15 memo is again
2 attached to this document, 13941 which is the
3 August 26, 1969 document, correct?
4 A. Could you repeat that? I didn't quite
5 follow you.
6 Q. Dr. Wakeham says that he has attached
7 the November 15, 1968, document to this updated
8 request, August 26, 1969, and, in fact, it
9 appeared as appendix one, correct?
10 A. You didn't give it to me again, did
11 you?
12 Q. Yes.
13 A. It is not attached to this here, is
14 it? Oh, yeah, here it is. Okay.
15 Q. Okay.
16 A. All right.
17 Q. And in this memorandum, this August 26,
18 1969 memorandum, again, Dr. Wakeham is asking
19 permission to do biological research, correct?
20 A. Correct.
21 Q. And he lists a whole slew of types of

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1 respect to the issue of cigarette smoking and
2 health?
3 A. I don't think he would.
4 Q. He wouldn't make presentations to the
5 board on the issue?
6 A. Of cigarette smoking and health, I
7 don't think so.
8 Q. All right. Now, this is a pretty
9 detailed outline of the biological research that
10 he wants to perform; is it not?
11 A. Yes. It is.
12 Q. And this does not jog your memory as to
13 whether or not, as to the events rather that are
14 referred to in the document?
15 A. I don't remember exactly this date or
16 anything like that, but I do remember that
17 eventually I agreed and recommended to Philip
18 Morris that we buy a company in Cologne called
19 INBIFO to do this type of work.
20 And I think what I read in
21 Dr. Wakeham's memo here, what really motivated me

1 testing that he wants to perform, correct?
2 A. Correct.
3 Q. Inhalation studies, correct?
4 A. Correct.
5 Q. Tests for carcinogenicity. You
6 know what carcinogenic means?
7 A. Yes, I do.
8 Q. Tell the jury what it means?
9 A. It causes cancer.
10 Q. He wants to test for that, he wants to
11 do evaluation of new bioassay tests. What are
12 bioassay tests?
13 A. I'm not quite clear what they are.
14 Q. In any event, he wants to do a number,
15 permission to do a number of biological testing
16 because he thinks it is relevant to the issue of
17 cigarette smoking and health, correct?
18 A. That's correct.
19 Q. And again he was the person at least in
20 Philip Morris, he was a corporate officer,
21 correct?

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1 was that we wanted to track work done by others.
2 Q. You wanted to replicate, see if you
3 could replicate like animal painting studies and
4 inhalation studies, correct?
5 A. Yes.
6 Q. There were scientists who were doing
7 those types of studies and they were coming to a
8 conclusion that there was a relationship between
9 the smoke condensate and tumors, correct?
10 A. I wasn't going that far. I just said
11 that there was a program done by the -- I forgot
12 exactly who did the Tobacco Working Group, which
13 government agency was in charge of Tobacco
14 Working Group, and I wanted to replicate the data
15 or I wanted to be as aware of the data that was
16 going to come out of that program.
17 Q. And, in other words, you wanted to see
18 whether the data was correct?
19 A. That's correct.
20 Q. And one of the reasons that you thought
21 it was a good idea to acquire INBIFO, and just so

1 A. I don't remember whether he was a
2 corporate officer or whether he was an officer of
3 the operating company.
4 Q. If you don't remember, you don't
5 remember?
6 A. I don't.
7 Q. You do remember though that he was the
8 person who the board looked to for information on
9 cigarette smoking and health, correct? When I
10 say the board, the board of Philip Morris?
11 A. Not on cigarette smoking and health.
12 That was the responsibility of the Council of
13 Tobacco Research.
14 Q. The Council for Tobacco Research would
15 advise Philip Morris on the issue of cigarette
16 smoking and health?
17 A. No. They would do the work on
18 cigarette smoking and health.
19 Q. I'm looking to determine whether
20 Dr. Wakeham was the individual at Philip Morris
21 who would advise the board of directors with

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1 the jury understands, INBIFO was a research
2 facility, correct?
3 A. It was a testing facility.
4 Q. They did research, correct?
5 A. I don't know whether you would term it
6 research. It was there to do, it was doing
7 defensive work. We were not trying to establish
8 anything in the area of smoking and health. We
9 were trying to test, check the work done by
10 others on the, what happened to animals under
11 certain conditions.
12 Q. Right. And those, that research that
13 was being performed for Philip Morris was being
14 performed overseas at INBIFO, correct?
15 A. It was being done, you call it
16 research, but that sort of word was being done by
17 INBIFO in Cologne.
18 Q. Let's call it testing, animal testing,
19 okay?
20 A. Good.
21 Q. Animal testing was being done by Philip

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1 Morris in Germany, correct?
2 A. In Cologne.
3 Q. That's in Germany, just so the jury
4 understands, that's Germany?
5 A. Yes.
6 Q. You are much more familiar with Germany
7 than most of us. That's where you were born?
8 A. I was born there.
9 Q. And Philip Morris was paying for animal
10 studies to be performed in Germany, correct?
11 A. That's correct.
12 Q. And at a certain point in time, it was
13 decided that Philip Morris should acquire INBIFO,
14 correct?
15 A. That's correct.
16 Q. So instead of INBIFO being a separate
17 entity that was receiving monies from Philip
18 Morris in the United States to do research or do
19 studies, Philip Morris was going to actually own
20 the facility itself, correct?
21 A. That's correct.

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1 A. Just because Dr. Wakeham says it
2 doesn't mean I have to agree with it.
3 Q. I know. Do you have any reason to
4 think that he was lying in this internal memo?
5 MR. HAFETZ: Objection.
6 A. It has nothing to do with lying. It was
7 his feeling. I don't know why he had the
8 feeling. That was not my motivation.
9 Q. And this doesn't, you remember what
10 your motivation was now, correct?
11 A. I mentioned my motivation to you
12 before. My motivation was to track the work done
13 by others.
14 Q. All right. That could have easily been
15 done in the United States, couldn't it?
16 A. Could have.
17 Q. There was no reason why it could not be
18 done in the United States, correct?
19 A. Well, you do it wherever you feel you
20 can acquire somebody who is most competent.
21 Q. And before you acquired INBIFO, Philip

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1 Q. And one of the reasons that Philip
2 Morris bought that facility in Germany was that
3 Philip Morris could then do certain types of
4 studies that they didn't want to do in the United
5 States, because they were worried that if they
6 did the studies in the United States, it might
7 jeopardize their position in cigarette smoking
8 and health litigation; correct?
9 A. No. That's not correct.
10 Q. Let me see if I can refresh your memory
11 on that issue. I'm going to hand you a
12 memorandum from again Dr. Wakeham.
13 It is a memorandum from Dr. Wakeham to
14 you of April 7, 1970; is that correct?
15 A. That's correct.
16 Q. Philip Morris letterhead?
17 A. That's correct.
18 Q. Subject: Acquisition of INBIFO,
19 correct?
20 A. That's correct.
21 Q. That's the same INBIFO that you told us

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1 Morris was paying another company in Cologne,
2 INBIFO, another company at that time to do those
3 studies in Germany, correct?
4 A. We were doing work with them before.
5 Q. In Germany?
6 A. And we were paying them in Germany.
7 Q. Those were animal studies?
8 A. And at a later time we acquired the
9 company.
10 Q. You could have been doing those animal
11 studies in the United States, correct?
12 A. No.
13 Q. There weren't labs in the United States
14 doing animal testing?
15 A. I'm sure there was. My recollection,
16 we felt this was a more qualified lab than
17 somebody who was available to us in the United
18 States.
19 Q. And, in fact, there were concerns that
20 if there was too much of a direct contact between
21 Philip Morris in the United States, and INBIFO in

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1 before is located in Cologne Germany?
2 A. That's correct.
3 Q. Where they were doing animal studies
4 for Philip Morris, correct?
5 A. That's correct.
6 Q. I wanted to direct your attention to
7 the last paragraph where Dr. Wakeham says:
8 "Since we have a major program at INBIFO and
9 since this is a location where we might do some of
10 the things which we are reluctant to do in this
11 country, I recommend that we acquire INBIFO,
12 either in toto or to the extent of controlling
13 interest."
14 Q. Do you see that, sir?
15 A. I see that.
16 Q. Did I read that correctly?
17 A. You read it correctly.
18 Q. Do you have any reason to question
19 Dr. Wakeham's veracity with respect to that
20 statement?
21 MR. HAFETZ: Objection.

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1 Germany, that you might have problems in not
2 disclosing the research to United States
3 authorities, correct?
4 A. No. Indirect.
5 MR. GARNICK: Objection to form. Let me
6 have an opportunity to object. Objection to
7 form.
8 THE WITNESS: Okay.
9 Q. While we are looking for that document,
10 I asked you what started our discussion was my
11 question to you as to why biological research was
12 not being funded or not being performed in the
13 United States, and I asked you whether or not you
14 recalled that one of the reasons that it was not
15 being performed is because the risk of doing it,
16 it was too risky to do that in the United States
17 from a legal point of view; is that correct?
18 MR. GARNICK: Objection.
19 MR. EDELL: You remember my questions
20 on that issue?
21 THE WITNESS: Will you restate it for

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1 me.
2 Q. I said to you that, in fact, the
3 decision that biological research was not being
4 performed, that to do so in-house might pose a
5 legal PROBLEM for Philip Morris; Is that correct?
6 A. I said I didn't agree with that.
7 Q. Do you remember that that was one of
8 the reasons why Philip Morris was not doing
9 biological research in-house?
10 A. No.
11 Q. Let's see if I can refresh your memory
12 on that issue, Mr. Goldsmith. All we need is
13 this top page here.
14 I'm going to show you a document which
15 is October 7, 1969, and that is a confidential
16 document from Joseph F. Cullman, III, correct?
17 A. Yes.
18 Q. To Ross R. Millhiser?
19 A. Right.
20 Q. Can you tell the jury who Mr. Millhiser
21 is?

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1 philosophical and practice problems of mounting a
2 PM biological research program seem to me to
3 outweigh the advantages.
4 Do you see that, sir?
5 A. Oh, yeah, I see that.
6 Q. Do you have any reason to question
7 whether that was Mr. Cullman's motivation for
8 rejecting a change in policy not to do biological
9 research?
10 A. Look, I couldn't disagree with what the
11 chairman writes in the memorandum. That's what
12 he seems to have written.
13 Q. Do you have any reason to believe that
14 that was not the motivating factor for Philip
15 Morris not doing biological research in-house?
16 A. I really can't, I can't respond to that
17 at all.
18 Q. You don't know whether there is any
19 reason for you to disbelieve that that is the
20 reason why?
21 A. Look, all I see here is a memorandum in

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1 MR. GARNICK: Do you have another copy
2 of that document?
3 MR. EDELL: Yes, I do.
4 I think he was my boss at that
5 particular time. Yes. He has.
6 Q. Certainly Mr. Cullman was your boss
7 also, correct?
8 A. Yes. He was.
9 Q. He was the guy that was calling the
10 shots for Phillip Morris at that time?
11 A. Yes. He was.
12 Q. It shows a copy of this document going
13 to George Weissman, is that correct?
14 A. Yes.
15 Q. And who is George Weissman?
16 A. George Weissman?
17 Q. You remember him, don't you?
18 A. I do, but I don't remember what job he
19 had at that particular time. I think he was in
20 charge of marketing at that time. Well, no,
21 maybe he was in charge of international. I don't

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1 which Mr. Cullman rejects the program. That's
2 all I know. I don't know why he did it or what
3 his thinking was. I wasn't privy to the
4 conversation.
5 Q. You were privy to the memorandum?
6 A. I am privy, you are showing it to me
7 now, and I certainly must have been privy at that
8 time, but I wasn't privy to the conversations
9 between Mr. Cullman, Mr. Millhiser and
10 Mr. Wakeham.
11 Q. But when you got this memorandum, you
12 weren't shocked that Mr. Cullman wasn't allowing
13 biological research at Phillip Morris was because
14 of the legal, philosophical and practical
15 problems, correct?
16 A. Mr. Edell, you are trying to have me
17 tell you that I was shocked 30 years ago, when I
18 received the memorandum, I have no idea how I
19 felt.
20 Q. Did you write a memorandum in response
21 to this, saying I don't understand this,

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1 really remember.
2 Q. Under Mr. Weissman, it is C. Goldsmith,
3 that is Clifford Goldsmith?
4 A. That's me.
5 Q. That's you? And the subject of this
6 document is Dr. Wakeham's memorandum relating to
7 biological research, correct?
8 A. Right.
9 Q. And it says: I have reviewed carefully
10 the proposal contained in Dr. Wakeham's
11 memorandum to Clifford Goldsmith, right?
12 A. Yes.
13 Q. Relative to what?
14 A. Biological research.
15 Q. I have discussed with you and George,
16 you being Mr. Millhiser, with you and George
17 Weissman informally my serious reservations about
18 the wisdom of embarking on this program at this
19 time. Do you see that?
20 A. I see that.
21 Q. On the bottom he says: The legal,

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1 Mr. Cullman?
2 A. I have no idea whether I did or
3 didn't. I have no recollection of it.
4 Q. If you did, it would have been in your
5 files, when you left, correct?
6 A. Probably would have.
7 Q. Now, I will make a representation that
8 we never saw such a memorandum, hasn't been
9 produced by Philip Morris to us. I don't know
10 whether your personal counsel has a copy of it?
11 A. That I wrote a memorandum?
12 Q. Yes.
13 A. I didn't take any of my files with me,
14 so if there was no memorandum, I would assume it
15 wasn't written.
16 MR. EDELL: We have been going for
17 about an hour. Why don't we take a short break.
18 VIDEO OPERATOR: We are going to go off
19 the record, the time is 11:03 a.m.
20 (Break.)
21 VIDEO OPERATOR: Back on the record,

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1 the time is 11:14 a.m.
2 Q. Mr. Goldsmith, during the break, I
3 located an earlier draft of one of Dr. Wakeham's
4 memorandum, and I would like to direct your
5 attention specifically to the fourth page of the
6 document, sir.

7 Just so the jury understands, the title
8 of this document is "need for biological research
9 by Philip Morris research and development." Is
10 that what it says on the first page?

11 A. Yes, sir. That's what it says.

12 Q. On page four it says: "We have reason
13 to believe that in spite of gentlemen's agreement
14 from the tobacco industry in previous years, that
15 at least some of the major companies have been
16 increasing biological studies within their own
17 facilities."

18 Does that refresh your memory, sir, of
19 the agreement within the industry not to do
20 biological research?

21 A. No. It does not.

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1 Q. And you don't, is it your testimony
2 that you know that there was no such agreement or
3 you don't recall whether there was an agreement
4 or not?

5 A. I don't recall any agreement.

6 Q. Now, again we were talking also before
7 we took the break about INBIFO; do you remember
8 that, sir?

9 A. Yes, sir. I do.

10 Q. Can you tell the jury who Robert
11 Seligman is?

12 A. Robert Seligman was a senior executive
13 in the Research Department.

14 Q. At Philip Morris?

15 A. At Philip Morris.

16 Q. Is he a corporate officer?

17 A. No, I don't think he was.

18 Q. Was he in charge of research and
19 development?

20 A. At one time he became in charge of
21 research and development.

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1 Q. Can you tell us who Dr. Max Hausermann
2 is or was?

3 A. Also a senior research official at
4 Philip Morris.

5 Q. He was located in New York, is that
6 correct, Dr. Hausermann?

7 A. Yes, he was.

8 Q. Did he have any contact with, was he
9 with Philip Morris Europe?

10 A. Yes, he was.

11 Q. Can you tell the jury what Philip
12 Morris Europe was or is?

13 A. Philip Morris Europe is a part of the
14 corporation that operates in Europe.

15 Q. Did it have a separate research and
16 development facility?

17 A. Yes, it did.

18 Q. And did it have any relationship to
19 FTR?

20 A. FTR was part of Philip Morris Europe, I
21 think.

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1 Q. Can you tell the jury what FTR was?

2 A. It is the Swiss subsidiary of Philip
3 Morris in Europe.

4 Q. Manufactures cigarettes?

5 A. Manufactures cigarettes.

6 Q. We also discussed before the break the

7 fact that one of the reasons Philip Morris wanted
8 to do research over in Germany was because they
9 believed that the information that would be
10 generated from the studies overseas would not be
11 subject to discovery, if you will, in the United
12 States?

13 MR. HAFETZ: Objection.

14 Q. Do you remember those questions, sir?

15 A. No.

16 Q. Let me ask you this: Was it your
17 understanding that one of the reasons why Philip
18 Morris performed animal studies in Europe was
19 because they wanted to ensure that it would be
20 difficult for any of the results of those studies
21 to be discovered in any United States smoking and

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1 health litigation?

2 A. I don't remember exactly why the
3 lawyers did not want to submit data in the United
4 States, from INBIFO to the United States, but
5 that was a legal decision.

6 Q. The lawyers decided that?

7 A. That's right.

8 Q. But the people who ran Philip Morris
9 went along with that decision, correct?

10 A. I don't know what you mean by that,

11 sir.

12 Q. Well, the lawyers, when you say "the
13 lawyers" are you talking about the lawyers within
14 Philip Morris as well as their outside counsel?

15 A. I don't remember exactly whether it was
16 in-house or outside counsel.

17 Q. But in any event, the people who were
18 running Philip Morris followed the advice of the
19 lawyers, correct?

20 A. That's correct.

21 Q. And Philip Morris went through

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1 tremendous pains to make sure -- Philip Morris in
2 the United States, went through tremendous pains
3 to make sure that they had very little contact
4 with INBIFO over in Germany; is that correct?

5 MR. GARNICK: Objection to form.

6 Q. Sir?

7 A. No. That's not correct.

8 Q. You remember that being the case, or
9 you just don't recall that?

10 A. I don't recall that.

11 Q. That's what I thought. Let's take a
12 look at this document which is P-12885. This is
13 a letter of March 31, 1977 from Robert B.

14 Seligman, who you told us was the head of
15 research and document for Philip Morris in the
16 United States, correct, sir?

17 A. At one time he became that, yes.

18 Q. It is a letter to Max Hausermann who
19 was the head of research and development over at,
20 research and development at Philip Morris Europe,
21 correct?

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1 A. Yes.
2 Q. I will ask you to read the letter and
3 tell us whether it refreshes your recollection
4 that the procedures employed at Philip Morris in
5 the United States were such that they tried to
6 avoid any contact with INBIFO over in Europe.
7 You say where he says, last sentence,
8 just in case you missed it, first paragraph: "We
9 have gone to great pains to eliminate any written
10 contact with INBIFO and I would like to maintain
11 this structure."
12 You see that, sir?
13 A. Yeah, I see that.
14 Q. And the subject that is being discussed
15 here is studies that were being done at INBIFO
16 concerning pesticide residue; isn't that
17 correct?
18 A. That's what it says here.
19 Q. Pesticide residue being pesticide
20 residue in cigarettes, correct? Sir?
21 A. No. I don't think so.

1 A. That's correct.
2 Q. All right. Now, is it fair to say,
3 sir, that this document is a document by
4 Dr. Seligman expressing concern of direct contact
5 between Philip Morris in the United States and
6 INBIFO?
7 MR. HAFETZ: Objection.
8 MR. EDELL: Sir?
9 A. This document says what it says.
10 Q. What does it say, sir?
11 A. It says: I have gone through great
12 pains to eliminate any written contact with
13 INBIFO, and I would like to maintain this
14 structure. That is Dr. Seligman.
15 Q. It says "we" not "I", isn't it, we have
16 gone through great pains?
17 A. He's talking about the Research
18 Department, I guess.
19 Q. Research Department in the United
20 States, correct?
21 A. Yes, I think so.

1 Q. Certainly you know that the subject of
2 this document is the shipment of cigarettes from
3 the United States to Europe; isn't that correct?
4 A. I think that's correct, but I am
5 wondering whether that is not pesticide residues
6 on tobacco, rather than in cigarettes. I don't
7 know what it was.
8 Q. You know that there is pesticide
9 residue in cigarettes, correct?
10 A. No. I know there is some on tobacco.
11 Whether it survives in the cigarette, I don't
12 know.
13 Q. You don't know that?
14 A. I don't know.
15 Q. You have no reason to believe that it
16 doesn't is that correct?
17 A. I don't have any reason to believe that
18 it does.
19 Q. Well, that may be a question that you
20 would like to answer. My question to you is: Do
21 you have any reason to believe that pesticide

1 Q. And, in fact, they were referring to a
2 dummy mailing address that they would send. You
3 know what a dummy mailing address would be?
4 A. I know what it would be, but I don't
5 know anything else about any dummy mailing
6 address.
7 Q. And this doesn't jog your memory that
8 Philip Morris went to great pains to ensure that
9 the research they were conducting over in Europe
10 would not be discovered in the United States?
11 A. No. It does not.
12 Q. And you are aware that there were
13 research results that were produced from research
14 performed at INBIFO that were not published by
15 Philip Morris; isn't that correct?
16 A. I think it is correct that Philip
17 Morris doesn't publish everything that they
18 produced. It is not a matter of competitive
19 advantage to publish everything you do.
20 Q. When you say "competitive advantage" is
21 it your testimony that the research that was

1 residue is not found in the cigarettes that are
2 sold and manufactured by Philip Morris?
3 MR. HAFETZ: Objection to form.
4 MR. EDELL: Sir?
5 A. I don't understand the question. Would
6 you repeat it?
7 MR. EDELL: Sure.
8 (The record was read by the reporter.)
9 A. Yes. I think that it is quite possible
10 that these residues are eliminated or reduced
11 during the manufacturing process.
12 Q. And in what manner are they reduced or
13 eliminated in the manufacturing process?
14 A. I didn't say they were. I said it
15 could be that they are reduced.
16 Q. So, in other words, anything is
17 possible, but you don't know whether or not --
18 A. I don't know whether or not.
19 Q. In the manufacturing process the
20 pesticide residue found in tobacco is either
21 eliminated or reduced; is that correct?

1 being done at INBIFO related to competitive
2 advantage?
3 A. No. You asked me whether anything was
4 published. I'm saying in general not everything
5 we do is published.
6 Q. Certainly, if it related to cigarette
7 smoking and health you would expect Philip Morris
8 to publish is; is that correct?
9 A. No. It is not.
10 Q. So if the research results show that
11 CO -- do you know what CO is?
12 A. Carbon monoxide.
13 Q. Carbon monoxide and nicotine in
14 laboratory animals, they wouldn't have published
15 those results, is correct?
16 MR. GARNICK: Objection to form.
17 A. I don't think it would have been
18 published.
19 Q. Certainly, test result like that
20 wouldn't help Philip Morris in terms of selling
21 its product, correct?

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1 MR. GARNICK: Objection to form. 2 MR. EDELL: Sir? 3 A. I don't know. They could have and they 4 couldn't have. It is a very general question, I 5 really can't answer. 6 Q. Who is Mr. Holtzman? 7 A. He is a lawyer. 8 Q. And what was part of your job 9 responsibilities in 1977 that would bring you in 10 contact with Mr. Holtzman? 11 A. 1977. Anything could have brought me 12 in contact with Mr. Holtzman. 13 Q. What would have gotten you in contact 14 with Mr. Holtzman with regard to INBIFO'S 15 unpublished reports regarding the effects of 16 carbon monoxide and nicotine on the survival of 17 mice? 18 MR. HAFETZ: Objection. 19 A. I have no idea. 20 Q. I'm sorry? 21 A. I have no idea.	1 getting a copy of this memorandum? 2 A. I am sure Dr. Wakeham liked to copy me. 3 Q. On anything? 4 A. Well, I have no idea why he copied me 5 on this memorandum. I don't recollect the 6 memorandum. 7 Q. Well, did you read it? 8 A. Just now? 9 Q. Yes. 10 A. No. I haven't finished reading it. 11 Q. How can you tell you don't remember, if 12 you don't read it? 13 A. I don't remember Domingo Aviado. 14 Q. You remember INBIFO? 15 A. I remember INBIFO. 16 Q. You see where it says in the first 17 sentence: Many years ago an INBIFO study 18 (unpublished) of the effects of CO -- that's 19 carbon monoxide? 20 A. Yes. 21 Q. And nicotine on the survival of mice	
	Page 81	Page 84
1 Q. You have no idea? 2 A. No. Why I would have talked to 3 Mr. Holtzman, I have no idea. 4 Q. Did any of your responsibilities relate 5 to INBIFO in 1977? 6 A. I think in 1977, I was in charge of 7 Philip Morris USA, and INBIFO at that time, yeah, 8 I think so. 9 Q. You think what, sir? 10 A. I think I had some responsibilities 11 with regard to INBIFO. 12 Q. What was that responsibility? 13 A. Because INBIFO reported to the Research 14 Department, and I was in charge of the Research 15 Department, and therefore, I would have had 16 loose responsibility, general responsibility, 17 over INBIFO. 18 Q. Who is Dr. Domingo Aviado? 19 A. I have no idea. 20 Q. You don't remember him being an expert 21 used by the tobacco industry regarding certain	1 show that the effects are additive. What does 2 that mean to you? 3 A. The effects of one added to the effect 4 of the other. 5 Q. He goes on to say in his memorandum: 6 That is in the presence of nicotine, carbon 7 monoxide effects are more pronounced than effects 8 of an equal exposure to carbon monoxide alone; is 9 that correct? 10 A. That's what it says. 11 Q. What are the effects on human beings of 12 carbon monoxide that you are aware of? 13 A. I can't describe that. 14 Q. Certainly enough carbon monoxide can 15 kill you; is that right? 16 A. I think so. 17 Q. That's how people kill themselves 18 sitting in the garage with the engine on, right? 19 A. That's what I -- I think so, yes. 20 Q. Sure. This document also talks about 21 the effects of nicotine on the heart, correct?	
	Page 82	Page 85
1 legislative processes? 2 A. No. I don't. 3 Q. Let me show you a document 13486, it is 4 a memorandum from Dr. Wakeham, head of research 5 and development, is that correct? 6 A. Yes. 7 Q. To Alex Holtzman; is that correct? 8 A. Yes. It is. 9 MR. HAFETZ: Can we have just one 10 minute. 11 MR. EDELL: Here, I'll give you your 12 own copy. 13 Q. It is dated May 18, 1977; is that 14 correct? 15 A. That's correct. 16 Q. The subject is CPR special project with 17 Dr. Domingo Aviado, is that correct? 18 A. Yes, sir. 19 Q. It shows a copy going to whom? 20 A. Me, Seligman and Resnick. 21 Q. Do you have any idea why you would be	1 A. Yes. 2 Q. Tell us why was it that Philip Morris 3 didn't publish the results of that unpublished 4 INBIFO study? 5 MR. HAFETZ: Objection. No foundation 6 for the question. 7 A. I have no idea. 8 MR. EDELL: Counsel, all objections 9 except to the form are reserved until trial. 10 MR. HAFETZ: That may be form objection 11 as well, I'm not sure if it crosses over. If it 12 is form, it is foundation. 13 MR. EDELL: And if it is not, you don't 14 need to make it, right? 15 MR. HAFETZ: Right. Neither one of us 16 is certain, so to protect the record it is on 17 foundation. 18 MR. EDELL: If you have any objection 19 as to foundation, you won't waive it by not 20 making the objection. Okay, is that fair? 21 MR. HAFETZ: All right.	

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1	MR. EDELL: Yes.	1 Morris in the smoking and health litigation; do
2	MR. HAFETZ: Okay.	2 you know what that means? Do you have an
3	MR. EDELL: Could you answer the	3 understanding of what that means?
4	question, sir?	4 A. I do.
5	(The record was read by the reporter.)	5 Q. Can you tell Mr. Garnick how you
6	A. I don't think Philip Morris didn't	6 interpret that?
7	publish many studies, and I don't know why they	7 MR. GARNICK: Mr. Goldsmith, don't tell
8	didn't publish this one. Publication of studies	8 me anything.
9	of that nature really wouldn't have served any	9 Q. Tell us, and then Mr. Garnick will
10	purpose that I am familiar with.	10 hear.
11	Q. Wouldn't have served any purpose that	11 MR. HAFETZ: Objection to form.
12	I'm familiar with, correct, sir?	12 Q. Sir?
13	A. Correct.	13 A. I've lost you, I'm sorry.
14	Q. Contribution to the literature on	14 (The record was read by the reporter.)
15	cigarette smoking and health and potential	15 A. I have an understanding of what it
16	harmful effects, that's a purpose, isn't it, sir?	16 means.
17	A. Could be.	17 Q. Tell the jury what your understanding
18	Q. Could be if you are interested in	18 is, please.
19	making sure that the public, the scientific	19 A. My understanding is that it would be
20	public and the medical community has all the	20 adverse to health litigation.
21	information that you have regarding the potential	21 Q. Might affect your ability to defend
	Page 87	Page 90
1	1 deleterious effects of your product, correct?	1 yourself in the litigation? Is that correct,
2	2 A. Well, I just -- let me answer you in	2 sir?
3	3 general. I don't believe that we published a	3 A. Could be.
4	4 great deal of the data, of the work done at	4 Q. Well, you understand that to be a part
5	5 INSMO.	5 of the question, correct?
6	6 Q. You are aware that one of the reasons	6 A. Yes.
7	7 that it wasn't published is because it might be	7 Q. Tell the Jury who Dr. Osdene is?
8	8 harmful to you with respect to your position on	8 A. Dr. Osdene was a scientist in the
9	9 cigarette smoking and health?	9 Research Department.
10	10 A. No.	10 Q. Are you familiar that Dr. Osdene has
11	11 Q. You remember that? You don't remember	11 taken the Fifth Amendment regarding questions
12	12 that?	12 regarding his employment at Philip Morris?
13	13 A. I said that wasn't the reason.	13 MR. HAFETZ: Objection.
14	14 Q. You are definitely saying that is not	14 A. Yes, sir.
15	15 the reason. You are not saying that I don't	15 MR. EDELL: That is a form objection?
16	16 remember, you are saying I know that Philip	16 MR. HAFETZ: Objection. Propriety of
17	17 Morris didn't publish this information not	17 the question.
18	18 because it relates to cigarette smoking and	18 MR. EDELL: Propriety of the question.
19	19 health litigation, correct?	19 That's reserved, isn't it, counsel?
20	20 A. No, I didn't. I said I don't remember	20 MR. HAFETZ: You just asked what the
21	21 why. I can't tell you why it did not publish	21 basis was.
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1	1 this or that particular piece of work. I just	1 MR. EDELL: I wanted to make sure I
2	2 can't tell you why.	2 wasn't missing something. You are interfering
3	3 Q. You know that it was the practice at	3 with the questioning of the witness.
4	4 Phillip Morris to bury any results that were	4 MR. HAFETZ: You asked the basis of the
5	5 potentially harmful to them in their cigarette	5 question. I stated it.
6	6 smoking and health litigation, correct?	6 MR. EDELL: I wanted to make sure it
7	7 MR. GARNICK: Objection to the form.	7 was a form objection. You are only to object to
8	8 MR. EDELL: What's your objection?	8 the form of the question.
9	9 What's wrong with the form of the question?	9 MR. HAFETZ: It was not a form
10	10 MR. GARNICK: Practice is vague, burying	10 objection.
11	11 results is vague, potentially harmful to them is	11 MR. EDELL: Then don't make the
12	12 vague.	12 objection.
13	13 MR. EDELL: Okay. Do you understand the	13 MR. HAFETZ: You asked me the basis for
14	14 question, sir?	14 it.
15	15 THE WITNESS: No.	15 MR. EDELL: That's right.
16	16 Q. You don't have any idea what I mean	16 MR. HAFETZ: I didn't object to form.
17	17 when I say burying the results?	17 If you heard my answer, I said wasn't form, you
18	18 A. I have an idea.	18 wouldn't have asked the basis. You asked me the
19	19 Q. What do you interpret that to mean?	19 basis. Why don't we have it read back.
20	20 A. Burying the results means hiding them.	20 MR. EDELL: If you don't have an
21	21 Q. And that might be adverse to Philip	21 objection to the form of the question, please
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1 don't disrupt the proceedings.

2 MR. HAFETZ: Mr. Edell, if you continue
3 to ask me the basis of the objection, even when
4 it is not form, I will comply with the request
5 and say so. So if you don't want to hear my
6 answer as to what is the basis for an objection
7 that is not form, don't ask me.

8 MR. EDELL: I did want to hear your
9 answer, I didn't want to hear the objection, if
10 it didn't relate to the form of the question, so
11 you are clear.

12 MR. HAFETZ: I understand that, and you
13 are clear to me now. We're both clear.

14 MR. EDELL: Well, good. I'm glad then.
15 Q. You told us that you did remember that

16 Dr. Osdene did plead the Fifth Amendment.

17 MR. HAFETZ: Objection.

18 A. You asked me whether I was aware of it.

19 Q. You were aware of it?

20 A. I was aware of it.

21 Q. You said yes, you were aware of it?

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1 answering that question, correct?

2 A. I don't -- I'm not specifically
3 familiar with what his work was on nicotine.

4 Q. You don't remember, sir?

5 A. I said I don't remember.

6 Q. You don't remember. Okay.

7 MR. HAFETZ: May we have a copy?

8 MR. EDELL: Oh, sure.

9 Q. This is a memorandum from Dr. Dunn to
10 Dr. Osdene; am I correct, sir?

11 A. Yes, sir.

12 Q. November 3, 1977?

13 A. Yes, sir. That's correct.

14 Q. You see where he says, it is regarding
15 a proposed study by a Dr. Levy?

16 A. Right.

17 Q. He says: "If, however, the results
18 with nicotine are similar to those gotten with
19 morphine and caffeine, we will want to bury it."

20 You see that, sir?

21 A. I see it.

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1 Q. Is that consistent with your
2 recollection of the practice at Philip Morris
3 with respect to adverse results of studies?

4 A. No.

5 Q. Do you have any reason to believe that
6 that was not the practice at Philip Morris?

7 A. Yes.

8 MR. HAFETZ: Objection.

9 Q. What is the basis of your statement,
10 sir?

11 A. To my recollection, we did not bury
12 anything.

13 Q. Well, you don't remember burying
14 anything at Philip Morris?

15 A. I said to my recollection, same thing
16 as remembering.

17 Q. You can't state categorically that
18 Phillip Morris never buried any test results,
19 correct?

20 A. Of course not, Mr. Edell. I can't be
21 down there and watch every employee and see what

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1 every individual employee does. It was not the
2 policy of the corporation.

3 Q. You are telling me that it was not the
4 policy to bury adverse test results, correct?

5 A. That's correct.

6 Q. It was the policy not to publish
7 adverse test results?

8 A. I didn't say that.

9 Q. Was it the policy to not publish
10 potentially adverse study results?

11 A. I don't recollect what the exact policy
12 on publishing was.

13 Q. But you have a distinct recollection
14 with respect to burying test results?

15 A. I have only a distinct recollection
16 that the corporation would not bury matters.

17 Q. When you say "bury" what do you mean?

18 A. What it says here, burying.

19 Q. What does it mean, sir?

20 A. Hiding.

21 Q. Totally get rid of it, or was burying

1 include failure to disclose it to the public?
2 A. I can't answer that question.
3 Q. I want you to tell the jury what you
4 mean when you say it wasn't the policy at Philip
5 Morris to bury adverse test results? Do you mean
6 it wasn't the policy to destroy them or it wasn't
7 the policy to not publish them?
8 A. It wasn't the policy to not --
9 MR. HAFETZ: Objection. Objection to
10 form.
11 A. -- to not disclose it.
12 Q. You are testifying to that under oath;
13 is that correct?
14 A. Yes. I am.
15 Q. And when did you disclose the test
16 results regarding the comparison between the way
17 humans smoke and the way that the machines smoke
18 that were used by the FTC to identify tar and
19 nicotine numbers on packs of cigarettes?
20 MR. HAFETZ: Objection.
21 A. Will you repeat that or rephrase it? I

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1 Q. You don't remember being part of that
2 process?
3 A. No.
4 Q. Let me see if I can refresh your
5 memory. Before we do, let me ask you a question
6 about nitrosamines. You know what nitrosamines
7 are?
8 A. Yes, I do.
9 Q. It is suspected that nitrosamines cause
10 cancer, is that correct, contribute to the
11 development of cancer, correct?
12 A. Yes.
13 Q. And certainly, if research was being
14 performed for Philip Morris relating to the issue
15 of nitrosamines, that research would have been
16 published, correct, according to your statement
17 as to what the practice and policy at Philip
18 Morris was?
19 MR. GARNICK: Objection to form.
20 MR. HAFETZ: Objection.
21 A. No. I don't think you could read that

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1 I don't understand what you are talking about.
2 Q. You are aware of the fact that there
3 were tests being performed at Philip Morris to
4 determine whether the FTC numbers, you are
5 familiar with the FTC numbers regarding tar and
6 nicotine, yes?
7 A. Right.
8 Q. You are aware that there was research
9 done at Philip Morris over in Europe and in the
10 United States, that concluded that those tests,
11 those numbers used by the FTC, were not accurate,
12 correct?
13 MR. HAFETZ: Objection.
14 MR. GARNICK: Objection to form.
15 MR. HAFETZ: And objection beyond form.
16 A. I would not state it as not being
17 accurate. I would say that machine smoking did
18 not necessarily duplicate human smoking.
19 Q. And those, that conclusion was a result
20 of research being performed by Philip Morris,
21 correct?

1 into what I testified to.
2 Q. So there would be instances where they
3 wouldn't publish test results, we know that
4 already, correct?
5 A. Right.
6 Q. And certainly research relating to
7 nitrosamines is relevant to the issue of
8 cigarette smoking and cancer, wouldn't you say?
9 A. I don't know that.
10 Q. You don't know that?
11 A. No.
12 Q. What was your relationship with Hoffman
13 LaRoche? You don't know that Hoffman LaRoche was
14 doing research respecting nitrosamines?
15 MR. HAFETZ: Objection.
16 A. No. I don't remember that.
17 Q. You don't remember Hoffman LaRoche
18 after meeting with Dr. Osdene stating that they
19 dropped all plans for publishing data on
20 nitrosamines?
21 MR. HAFETZ: Objection.

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1 A. Yes.
2 Q. Philip Morris didn't publish that
3 research, didn't turn that over to the FTC, did
4 they?
5 A. Not to my knowledge.
6 Q. In fact, Philip Morris had a manuscript
7 committee, did they not?
8 A. I remember they had, yes.
9 Q. You participated in that process,
10 didn't you, sir?
11 A. I don't remember if I did.
12 Q. You don't remember that?
13 A. No.
14 Q. Tell the jury what the manuscript
15 procedure process was?
16 A. I don't remember the process. My
17 recollection is that the committee approved
18 matters for publication.
19 Q. And they also denied permission for
20 publication, correct?
21 A. That's correct.

1 A. No.
2 Q. Let me see if I can refresh your
3 memory, document 14087, it is a letter from John
4 W. Gage, is it, to Dr. Osdene, Director of
5 Research, 1977, correct?
6 A. Yes, sir.
7 Q. Same time when we were talking about
8 the Dunn memorandum regarding burying of research
9 results, correct, sir?
10 A. Yes, sir.
11 Q. The same time you were head of Philip
12 Morris, USA?
13 A. Yes, sir.
14 Q. You see on the bottom of the document
15 where it says: For reasons discussed in your
16 office, we have dropped all plans for publishing
17 data on nitrosamine inhibition in cigarette
18 smoke?
19 A. Yes, sir.
20 Q. You don't know about that either?
21 A. No.

1 Q. Did Dr. Osdene have the power within
2 the Philip Morris structure, to direct that such
3 publications not be made of Philip Morris test
4 results?

5 A. I really don't know.

6 Q. You wouldn't expect for him to do it of
7 his own accord, would you, sir?

8 A. Mr. Edell, I don't know. Why he did
9 it, or whether he did, I have no idea.

10 Q. Did you ever discuss the issue with him
11 as to whether or not he should or should not make
12 sure that all test results are being published?

13 A. No, I did not.

14 Q. Well, how was he advised as to this
15 supposed policy that you had at Philip Morris in
16 1977 not to fail to publish relevant study
17 results?

18 MR. HAFETZ: Objection to form.

19 A. I don't think I said that, Mr. Edell.

20 I didn't testify to that.

21 Q. You didn't testify as to what, sir?

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1 as human health is concerned.

2 Q. To be on the safe side, though, you
3 made sure they were published, didn't you, just
4 in case they were relevant?

5 MR. HAFETZ: Objection to the form.

6 Q. Is that correct, sir?

7 A. I just told you, I didn't do that, no.

8 Q. Certainly couldn't have hurt the
9 scientific and medical community to publish those
10 results, correct?

11 A. I can't answer that.

12 Q. Can you imagine in any way it would
13 hurt the medical and scientific community?

14 A. Sure. Could have been misleading.

15 Q. Publishing it could have been
16 misleading?

17 A. Yes. It could.

18 Q. In what way?

19 A. I really can't answer that.

20 Q. You are under oath, and you told us
21 under oath that it could be misleading?

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1 A. This policy.

2 Q. So there was no policy at Philip Morris
3 that mandated the publication of relevant
4 cigarette smoking and health research, correct?

5 MR. GARNICK: Objection to form.

6 A. I didn't say anything about cigarette
7 smoking and health research. I just said there
8 was no policy that I recollect about publishing
9 this data, yes or no.

10 Q. I could be wrong, but let me just see
11 if we are both on the same page. I asked you
12 whether or not Philip Morris had a policy with
13 respect to publication of research results that
14 related to cigarette smoking and health, correct,
15 you remember that?

16 A. Yes. I think so.

17 Q. Just so we're clear, what is, what was
18 your testimony as to what that policy was?

19 A. I don't think that the data that we are
20 talking about, namely the testing at INBIEQ and
21 other places, was smoking and health data. It

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1 A. Right.

2 Q. And I want to know how.

3 A. Well, for example, it could say that
4 smoking caused a certain disease or cancer, when
5 it gave cancer on the skin of mice, and I don't
6 believe that that necessarily applies to human
7 beings.

8 Q. When you say "It doesn't necessarily
9 apply to human beings" --

10 A. Nobody knows the answer.

11 Q. Certainly, Mr. Goldsmith doesn't know
12 that answer; is that correct?

13 A. That's correct.

14 Q. Mr. Goldsmith hasn't any training in
15 carcinogenicity; is that correct?

16 A. Certainly not.

17 Q. Dr. Wakeham certainly has that training
18 with respect to the constituents of cigarette
19 smoke, correct?

20 A. Constituents in cigarette smoke, yes.

21 Q. You are aware that Dr. Wakeham

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1 was data on what the effect of cigarette smoke
2 would have on the backs and the lungs of animals,
3 but it did not, it was not work that had any
4 connection to human health.

5 Q. Well, sir, you are aware that the
6 animal painting studies were well accepted within
7 the tobacco industry as a test for toxicogenicity?

8 MR. HAFETZ: Objection.

9 A. No.

10 Q. You weren't aware of that?

11 A. No. I didn't say I wasn't aware of it,
12 I don't agree with it.

13 Q. It was generally accepted among
14 research directors that that was the case,
15 correct?

16 MR. GARNICK: Objection to the form.

17 A. I don't really know what the research
18 directors accepted or not.

19 Q. But you --

20 A. But I did not, for one, accept that the

21 animal studies necessarily were relevant as far

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1 concluded that there were many, many carcinogens
2 in cigarette smoke, correct?

3 A. I don't know when you say many, many.

4 Q. More than two dozen, sir?

5 A. I don't know the answer to that

6 question.

7 Q. Are you aware that there are at

8 least --

9 A. Some.

10 Q. -- a couple of dozen or more known
11 carcinogens in cigarette smoke?

12 A. No. I'm not aware that there are.

13 That doesn't mean to say there aren't, but I'm
14 not aware of it.

15 Q. You were the person who, I thought,
16 made the decisions for Philip Morris as to what
17 their position was on cigarette smoking and
18 health. Am I wrong?

19 MR. GARNICK: Objection to the form.

20 Q. As president of Philip Morris USA, did
21 you not make the decision as to whether or not

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1 there was a relationship between cigarette
2 smoking and health?
3 A. No, I didn't.
4 Q. Who made that decision for Philip
5 Morris?
6 A. I really don't think that the answer
7 can be -- I don't think I can answer that. That
8 was not a decision made by one person.
9 Q. Tell us the names of the people who
10 made that decision.
11 A. I can't really do that. I think that
12 the final decision as to the corporate posture
13 would be made by the chairman.
14 Q. What do you mean by "corporate
15 posture"?
16 A. Corporate feeling or corporate decision
17 on smoking and health would be made by the
18 chairman.
19 Q. Isn't it just a scientific issue, sir?
20 A. I don't think the scientific issue has
21 been resolved.

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1 that would be the knowledge I would have at that
2 time, yes.
3 Q. You would have no reason to why
4 question him as to whether or not he was right in
5 identifying dozens of carcinogens in cigarette
6 smoke, would you?
7 MR. HAFETZ: Objection.
8 A. I never heard of dozens of carcinogens.
9 Q. I want to see if I can refresh your
10 memory.
11 MR. EDELL: Why don't we go off the
12 videotape a second while I look this up, okay.
13 VIDEO OPERATOR: We're going off the
14 record. The time is 11:57 a.m.
15 (Discussion off the record.)
16 VIDEO OPERATOR: Back on the record, the
17 time is 11:57 a.m.
18 Q. Sir, what is the Philip Morris Research
19 and Development Committee? Ever heard of it?
20 A. No. I'm sure I have. I'm sorry, I
21 can't really call up that particular committee.

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1 Q. I understand that. But is it not a
2 scientific issue as to whether or not there is a
3 relationship between cigarette smoking and
4 health?
5 A. I guess eventually there would be.
6 Q. It is not a marketing decision, is it?
7 A. No.
8 Q. It is not an advertising decision, is
9 it?
10 A. No. It is not.
11 Q. It is not a legal decision, is it?
12 A. No.
13 Q. It is a scientific and medical
14 decision, correct?
15 A. Yes.
16 Q. The person with the most training
17 regarding that issue at Philip Morris was
18 Dr. Wakeham; correct?
19 A. No. He has no medical training.
20 Q. He has the most scientific training;
21 isn't that correct?

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1 If you will refresh my memory--
2 Q. I'll do my best. I will show you a
3 document marked as P-12784. It is a presentation
4 to R&D Committee by Dr. Wakeham at a meeting held
5 in the New York office on November, can't read
6 the date, looks like maybe the 15th, 1961.
7 A. 1961?
8 Q. Yes, sir. You were with Philip Morris
9 at the time?
10 A. Yeah.
11 Q. Were you in New York?
12 A. Yeah. But I was in charge of
13 operations at that time.
14 Q. You were?
15 A. Yeah.
16 Q. Therefore, you would have had
17 responsibility over Dr. Wakeham, correct?
18 A. Yes, I would have.
19 Q. And I direct your attention to the
20 eleventh page of the document. You see where it
21 says: "Partial list of compounds in cigarette

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1 A. He has no medical training.
2 Q. Scientific, scientific training?
3 A. Yes.
4 Q. The person with the most scientific
5 training at Philip Morris was Dr. Wakeham,
6 correct?
7 A. Correct.
8 Q. If he identified dozens of carcinogens
9 in cigarette smoke, you would have to defer to
10 him on that issue, correct?
11 MR. HAFETZ: Objection.
12 Q. You don't have the same training he
13 does, do you?
14 A. No, I don't.
15 Q. So you would have to defer on him on
16 that issue?
17 MR. HAFETZ: Objection.
18 Q. It is not a matter of corporate
19 decision?
20 A. I don't think it is a question of
21 deferring. I hear what he says, and as far as

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1 smoke also known as carcinogens"?
2 MR. HAFETZ: You said page eleven --
3 MR. EDELL: You have to just count the
4 pages. They are not numbered.
5 MR. HAFETZ: Bates O1FB0018.
6 MR. EDELL: Whatever, it is the
7 eleventh page. It is a partial list of compounds
8 in cigarette smoke also identified as
9 carcinogens, counsel?
10 MR. HAFETZ: Make sure we're on the
11 right page.
12 MR. EDELL: Does that page of yours say
13 that, or you don't want to make that statement.
14 MR. HAFETZ: We do want to make a
15 statement. Slow down, Mr. Edell.
16 MR. EDELL: You have it in front of
17 you.
18 MR. HAFETZ: We're going to place in
19 front of-- yes, we're going to place in front of
20 the witness the same page of the document you
21 just referred to, so he has the same page you

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1 does. He does now, and go.
2 Q. Okay. He's got it. Got it, Doctor?
3 I'm sorry, Mr. Goldsmith, have you got
4 Dr. Wakeham's presentation?
5 A. Yes. It must be.
6 Q. You weren't aware that these were all
7 of the compounds in cigarette smoke identified as
8 carcinogens by Dr. Wakeham?
9 A. No. I wasn't aware. If you will just
10 notice here, there was one, two, three, four,
11 five, six, seven, eight of them are benzopyrene
12 and they are all known as one, so I'm not --
13 Q. They are all known as hydrocarbons?
14 A. Yes. But you talk about dozens of
15 them.
16 Q. You were aware of arsenic?
17 MR. HAFETZ: Excuse me. I think he was
18 in the middle of a --
19 MR. EDELL: I'm sorry.
20 MR. HAFETZ: Please let the witness
21 finish his answer. Can we have back the last

1 they are found more frequently in smokers versus
2 nonsmokers?
3 A. Yes.
4 Q. Lung cancer, bladder cancer, and
5 cardiovascular diseases?
6 A. Yes, it says that.
7 Q. And that these studies show the
8 association that suggests that cigarette smoking
9 may be a causative factor; that's what
10 Dr. Wakeham wrote in '61, correct, sir?
11 A. Yes.
12 Q. Did Philip Morris publish Dr. Wakeham's
13 opinion at that time?
14 A. No, not to my knowledge. I should say
15 I don't know.
16 Q. I'm sorry?
17 A. Not to my knowledge.
18 Q. You would have let him publish that, if
19 it was up to you; is that what you are saying?
20 A. No. I would not have.
21 Q. You would not have let him?

1 question and the part of the answer he was on?
2 You interrupted him, Mr. Edell.
3 MR. EDELL: Apologize, Mr. Goldsmith.
4 MR. HAFETZ: Can we have it read back?
5 MR. EDELL: Absolutely.
6 (The record was read by the reporter.)
7 Q. Were you going to add something, sir?
8 A. I was going to say that here is another
9 on here that is glucose.
10 Q. Right.
11 A. To me as far as I'm concerned -- and
12 fructose, they are not carcinogens.
13 Q. You know that they are not carcinogens
14 when they are found in smoke and you inhale them
15 into your lungs?
16 A. I don't know. I don't think
17 Mr. Wakeham knew in '61, Dr. Wakeham.
18 Q. It does say partial list of compounds
19 in cigarette smoke also identified as
20 carcinogens, correct?
21 A. That's what it says up here. I'm

1 A. No.
2 Q. He also says that the physiological
3 tests in animals showed an increase in tumors in
4 animals receiving smoke condensate being painted
5 on the backs, correct?
6 A. It says that on there, yes, sir.
7 Q. You have no reason to disagree with
8 that fact, do you, sir?
9 A. I have no reason to disagree or agree.
10 Q. You had statistical studies, correct,
11 that showed a relationship between cigarette
12 smoking and disease?
13 A. Right.
14 Q. You had animal studies that showed a
15 relationship between the smoke condensate from
16 cigarette smoke and tumors, correct?
17 MR. GARNICK: Objection to the form.
18 Q. Correct?
19 A. Correct.
20 Q. And you had compounds that were found
21 in cigarette smoking that were carcinogenic,

1 trying to point out to you, that just because it
2 says that, doesn't mean it has to be true.
3 Q. Oh, I know that. But just because you
4 say it might not be doesn't mean that Dr. Wakeham
5 is wrong, is that correct?
6 MR. HAFETZ: Objection.
7 A. No. It does not.
8 Q. And were you aware at that time that
9 there were, back in '61, that there were
10 statistical studies showing an increase in the
11 prevalence of lung cancer in cigarette smokers
12 versus nonsmokers, correct?
13 A. An increase, would you rephrase that,
14 please?
15 Q. Sure. Maybe what we can do, let's
16 refer to Dr. Wakeham's presentation, it is on the
17 eighth page. See where it says "evidence linking
18 cancer and tobacco"?
19 A. Yes.
20 Q. First it says statistical evidence that
21 certain diseases are more prevalent, that is,

1 correct?
2 A. Correct.
3 Q. What didn't you have, sir?
4 MR. HAFETZ: Objection. Objection to
5 form.
6 A. We didn't have any information that
7 smoking ever caused -- the data here was on
8 animals. There was no laboratory data that
9 animals ever got cancer on inhalation of smoke.
10 Q. There were, there were animal studies
11 that were performed by Dr. Dentenwill and Drs.
12 Leuchtenberger and Dr. Homberger who found tumors
13 in animals exposed to whole smoke, correct?
14 MR. HAFETZ: Excuse me. May we fix a
15 time frame for the question?
16 MR. EDELL: During the time he was with
17 Philip Morris.
18 MR. HAFETZ: You are questioning on a
19 document related to 1961.
20 MR. EDELL: Yes. I am. The question
21 is broad. Okay?

1 A. I don't remember that.
2 Q. You don't know Dr. Drentenwill?
3 A. I remember the name.
4 Q. Do you know whether he did Inhalation
5 studies?
6 A. No. I don't know that.
7 Q. Do you know the Leukenbergers?
8 A. No.
9 Q. You ever hear of them?
10 A. No.
11 Q. Ever heard of Dr. Homberger?
12 A. Yes.
13 Q. You are not aware that he found in his
14 study that he performed for the Council for
15 Tobacco Research, which was an Inhalation study
16 on Syrian hamsters, he found tumors, laryngeal
17 tumors?
18 A. Tumors?
19 Q. Yes, cancer.
20 A. I don't know. You are telling me. I
21 don't know anything about it.

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1 form.
2 Q. Sir?
3 A. No. I don't remember.
4 Q. Let me see if I can refresh your memory
5 then.
6 MR. EDELL: Want to put in a new tape?
7 VIDEO OPERATOR: We are going off the
8 record to change the tapes. This is the end of
9 tape one. The time is 12:08 p.m.
10 MR. HAFETZ: As long as we're off the
11 record-
12 MR. EDELL: No, we're not going to take
13 a break right now.
14 MR. HAFETZ: I would like to take a
15 break for lunch at 12:30.
16 MR. EDELL: You got it.
17 MR. HAFETZ: Have patience, Mr. Edell.
18 (Discussion off the record.)
19 VIDEO OPERATOR: Back on the record,
20 the time is 12:10 p.m.
21 Q. I'm going to show you a document marked

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1 Q. You don't remember that?
2 A. I don't remember that. I'm sure I must
3 have. I don't remember.
4 Q. Well, you are certainly familiar with
5 Dr. Auerbach's study, correct? The smoking dog
6 study?
7 A. I remember that, yes.
8 Q. And you are familiar with the fact that
9 he found invasive cancers in the dogs that were
10 smoking, correct?
11 A. My recollection is that Dr. Auerbach
12 was discredited in his study.
13 Q. We can get to that. Certainly, the
14 tobacco industry tried to discredit him, did they
15 not, took out full pages in the newspapers
16 throughout the country trying to discredit his
17 research, isn't that correct?
18 A. I don't like the word "try".
19 Q. You did. You did successfully
20 discredit him?
21 A. I think we did.

1 as 14109, and this is the, as you described it,
2 successful effort by the tobacco industry to
3 discredit Dr. Auerbach. This is one of the
4 advertisements that was placed by the Tobacco
5 Institute in newspapers throughout the country.
6 This particular one was in the Baltimore Sun.
7 Do you remember this ad campaign, sir?
8 A. No, I don't.
9 Q. Did you read it?
10 A. Did I read it now?
11 Q. Yes.
12 A. I just have to look at it. I don't
13 remember the ad campaign. I didn't remember at
14 all that we placed any ads in newspapers.
15 I skimmed it. I didn't read every word
16 of it.
17 Q. You see where it contains a series of
18 letters between Mr. Cullinan, chairman of the
19 board of Phillip Morris, as well as chairman of
20 the executive committee of the Tobacco
Institute?

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1 Q. You didn't disclose to him that, in
2 fact, Dr. Fagan who was in the research and
3 development facility, was given total access to
4 all of Dr. Auerbach's research materials, did
5 you?
6 MR. GARNICK: Objection to form.
7 A. I don't remember anything about
8 Dr. Fagan and what he had access to, no.
9 Q. The way you tried to discredit him or
10 successfully discredited him, was suggesting that
11 Dr. Auerbach didn't make his data available; is
12 that correct?
13 A. That's not my recollection.
14 Q. Then how did you discredit him?
15 A. That the slides were not conclusive.
16 That's my recollection.
17 Q. You don't remember that the ad campaign
18 was simply to leave the suggestion in the
19 reader's mind that Dr. Auerbach did not cooperate
20 in providing his data?
21 MR. HAFETZ: Objection and objection to

1 A. Yes.
2 Q. To a Mr. Louis, chairman of the
3 American Cancer Society, where he says, you know,
4 we have requested access to Dr. Auerbach's
5 research results, yes?
6 A. Yes.
7 Q. He indicates that Philip Morris was
8 refused access to that; isn't that correct?
9 A. That's what it says in here.
10 Q. Do you know who Dr. Fagan is?
11 A. I don't remember his name.
12 Q. You remember he was in research and
13 development?
14 A. He worked for the Research Department,
15 yes.
16 Q. When you say "the Research Department"
17 are you talking about Philip Morris?
18 A. Yes.
19 Q. He worked with Dr. Wakeham, correct?
20 A. Yes.
21 Q. He worked with Dr. Wakeham relating to

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1 the Auerbach smoking dog experiment?

2 A. I do not remember that.

3 Q. Let me see if I can refresh your
4 memory. I will show you a February 23, 1972
5 memorandum from Dr. Wakeham.

6 MR. GARNICK: Marc, do you have an x-ray
7 copy of that?

8 MR. EDELL: Yes. I do. As a matter of
9 fact, I have two extra copies.

10 Q. This is a memorandum from Dr. Wakeham,
11 to you, Mr. Holtzman and Dr. Fagan, correct?

12 A. Says here to file.

13 Q. If you turn to the last page, sir.

14 A. It says copies the me. It is not
15 addressed to me. It is addressed to file.

16 Q. Okay, copies are sent to Clifford H.

17 Goldsmith, correct?

18 A. To me.

19 Q. Your position in 1972 was what, head of
20 operations for Philip Morris?

21 A. Yes.

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1 Q. Corporate officer?

2 A. Yes.

3 Q. Member of the board of directors?

4 A. Yes.

5 Q. And Alex Holtzman, his position was
6 legal counsel for Phillip Morris, in-house,
7 correct?

8 A. Yes.

9 Q. And Dr. Fagan?

10 A. Yes.

11 Q. It does relate to attempts to repeat
12 Dr. Auerbach's smoking dog experiment; is that
13 correct?

14 A. Yes.

15 Q. Does it jog your memory as to who
16 Dr. Fagan was?

17 A. No. He is just being copied on here.

18 Q. Is it your testimony that you were the
19 management of Phillip Morris, specifically, your
20 fellow board member -- let me back up a little
21 bit.

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1 Did you participate at all in the

2 decision to place this ad?

3 A. No.

4 Q. When you say "no" you say you -- why
5 wouldn't you have participated in that process?

6 MR. GARNICK: Objection to the form.

7 MR. EDELL: Sorry?

8 A. I wasn't involved in that type of
9 decision at that time. I don't know.

10 Q. When you say "that type of decision"
11 what do you mean?

12 A. To publish this sort of thing.

13 Q. Did you finish, Mr. Goldsmith?

14 A. I wouldn't have made that sort of
15 policy. I wasn't involved.

16 Q. You weren't involved in it?

17 A. I don't remember it.

18 Q. That's different. You don't remember
19 it?

20 A. Yes.

21 Q. I just want to make sure we

1 understand. You are not saying something

2 definitive, no, I didn't participate in it, you
3 are simply saying you don't remember it, correct?

4 A. I don't remember.

5 Q. Okay. Did anybody ever talk to you
6 about the difference between saying I don't
7 recall as opposed to saying no --

8 MR. HAFETZ: Objection.

9 Q. Let me finish the question. And the
10 ramifications it might mean to you in the context
11 of the federal investigation?

12 MR. HAFETZ: Objection. Direct the
13 witness not to answer.

14 Q. Other than your lawyer, did anybody
15 ever discuss that with you?

16 A. No.

17 Q. I'm going to show you a memorandum
18 marked as P-12851, it is a memorandum from R.
19 Fagan to Dr. H. Wakeham, February 25, 1972. I'm
20 sorry, it is 1970. I'm sorry. It is a couple of
21 months before the advertisement, the May 4, 1970

1 advertisement we were just discussing.

2 Mr. Goldsmith?

3 A. Yes. I'm reading, I can't do two
4 things at one time.

5 Q. I apologize, I want you to tell me
6 whether I'm right that it predates the
7 advertisement that we have just been discussing
8 where Mr. Cullman suggests that Philip Morris has
9 not had access to Mr. Auerbach's work; correct?

10 A. Yes. It does.

11 Q. This memorandum is from Dr. Wakeham --
12 sorry, Dr. Fagan to Dr. Wakeham regarding
13 Auerbach's smoking beagle study, correct?

14 A. Correct.

15 Q. That's the same study that is the
16 subject of the advertisement that we just
17 discussed?

18 A. That's correct.

19 Q. And you are aware -- you weren't aware,
20 I guess, that Dr. Fagan was a veterinary doctor?

21 A. No.

1 Q. You weren't aware of that?

2 A. No.

3 Q. That he has a degree in veterinary
4 medicine, you are not aware of that?

5 A. No.

6 Q. And the suggestion in the ad is that
7 Philip Morris wasn't given access to take a look
8 at the slides, correct, upon which they base the
9 statement, Dr. Auerbach based the statement that
10 they were tumors, correct?

11 A. Right.

12 Q. Now, I direct your attention to
13 paragraph six, where he says, and this, again,
14 just so the jury understands, this relates to a
15 meeting that Dr. Fagan had with Dr. Auerbach,
16 correct?

17 A. Correct.

18 Q. The paragraph says: "Dr. Auerbach
19 showed me photomicrographs of what looked, to my
20 nonexpert eye, as typical invasive carcinoma."
21 You see that, sir?

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Multi-Page™

Deposition of -Clifford H. Goldsmith
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1 A. I see that.
2 Q. He read me a report from Dr. John Byrd,
3 NCI, you know what NCI means?
4 A. Yes, sir.
5 Q. What does it mean?
6 A. National Cancer Institute.
7 Q. Which corroborates this diagnosis.
8 What does that mean?
9 A. He agrees with that diagnosis.
10 Q. Of invasive carcinomas found in the
11 dogs, correct?
12 A. Correct.
13 Q. Dr. Auerbach showed me several
14 notations in which Dr. S. Neilson, veterinary
15 pathologist, agrees with Auerbach's reading of
16 sides, correct?
17 A. That's what it says here, sir.
18 Q. Did Dr. Fagan state in this memorandum
19 that there was anything that Dr. Auerbach refused
20 to give him access to?
21 MR. HAFETZ: Objection. Document speaks

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1 for itself.
2 MR. EDELL: Read it.
3 A. The document speaks for itself, sir.
4 He doesn't say anything in here that I have read
5 in the time you showed me this memo.
6 Q. Take your time, please.
7 A. It doesn't say anything that he was
8 refused to look at a specific slide; but it
9 doesn't mean anything to me.
10 Q. It doesn't mean anything to you?
11 A. No. It doesn't. The entire matter of
12 Auerbach and the [REDACTED] have no recollection of it,
13 other than my recollection was Dr. Auerbach was
14 discredited, that the report was not correct,
15 period.
16 Q. The tobacco industry tried to discredit
17 him, correct?
18 A. No. I said the tobacco industry did,
19 in fact, discredit him.
20 Q. By putting this ad in [REDACTED] newspaper,
21 correct?

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1 A. I didn't say that.
2 MR. HAFETZ: Objection.
3 Q. How then?
4 A. I said I didn't recollect the exact
5 facts, but my recollection is that the industry
6 did discredit him.
7 Q. When you say but you don't remember how
8 they discredited him?
9 A. No, I don't.
10 Q. Do you have any reason to believe that
11 they discredited him in any other manner other
12 than this advertisement we have been talking
13 about?
14 A. I have no reason to believe anything.
15 I don't remember the incident or the details of
16 the incident.
17 Q. Would you please take your time, take a
18 look and read Dr. Fagan's memorandum to
19 Dr. Wakeham which came before this ad campaign by
20 the tobacco industry to discredit Dr. Auerbach
21 and tell us whether or not Dr. Auerbach refused

1 to make any material available to Philip Morris
2 employee, Dr. Fagan?
3 MR. GARNICK: Objection to form.
4 A. All I can tell you is that in this
5 memorandum, Dr. Fagan does not say he was refused
6 any data.
7 Q. Is it fair to say he was given access
8 to whatever he asked for?
9 A. I can't answer that. That doesn't say
10 that.
11 Q. You didn't review his testimony in
12 these cases; is that correct?
13 A. Pardon me, sir?
14 Q. You didn't review his videotaped
15 testimony in these cases?
16 A. No, I did not.
17 Q. Would you be surprised if he testified
18 under oath, that he was given access to anything
19 and everything that he asked for from
20 Dr. Auerbach?
21 MR. HAFETZ: Objection to form.

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1 A. I don't think it matters whether I
2 would be surprised or not surprised. If that is
3 what he testified, that's what he testified.
4 Q. Do you have any reason to believe he is
5 not telling the truth?
6 MR. HAFETZ: Objection.
7 A. I don't know whether Dr. Fagan told the
8 truth or not.
9 Q. Do you have any reason to believe that
10 he is not telling the truth?
11 MR. HAFETZ: Objection.
12 A. As I say, neither one way or the other.
13 Q. If you will wait one second, I will
14 pull up the testimony itself.
15 Page 256 of his deposition testimony
16 taken in this case, under the same circumstances
17 we are dealing with here, the following question
18 and answer was given by Dr. Fagan:
19 Question: The best of your knowledge,
20 he didn't withhold any information from you, that
21 is what you are saying? He being Dr. Auerbach.

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1 Answer: Whatever I asked for, I got.
2 So he didn't withhold anything.
3 Do you have any reason to believe that
4 Dr. Fagan was not testifying truthfully when he
5 testified to that effect?
6 MR. HAFETZ: Objection. Objection.
7 A. I have no way of knowing whether he
8 testified truthfully or not.
9 MR. EDELL: Okay. 12:30, break for
10 lunch.
11 VIDEO OPERATOR: We're going off the
12 record. The time is 12:25 p.m.
13 (Luncheon recess.)
14 VIDEO OPERATOR: One moment. We're
15 back on the record, the time is 1:32 p.m.
16 Q. Mr. Goldsmith, during the luncheon
17 break, did you speak with any of your lawyers?
18 A. Yes.
19 Q. Can you tell us what they told you?
20 MR. HAFETZ: Direction not to answer.
21 Q. Did any of the discussions with your

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1 lawyers relate to any of the documents that we
2 went over this morning?

3 MR. HAFETZ: Direction not to answer.

4 Q. Were you shown any documents over the
5 lunch hour?

6 MR. HAFETZ: Direction not to answer.

7 MR. EDELL: He can testify as to
8 whether he was shown documents, counsel. Maybe
9 you want to take a position on the fact as to
10 what documents he was shown, but he certainly can
11 testify as to whether he saw a document.

12 MR. HAFETZ: I disagree with you, but
13 we'll let him answer that.

14 A. I didn't see any documents.

15 Q. Were any documents read to you?

16 A. No.

17 Q. The content of any documents discussed
18 with you?

19 MR. HAFETZ: Direction not to answer.

20 Q. You told us before the luncheon break
21 that you really did not participate in this.

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1 be effective with respect to that earlier
2 document.

3 MR. EDELL: No. We can have for of any
4 documents that fall within that, or under that
5 umbrella.

6 MR. GARNICK: Okay.

7 Q. All right. Will you tell the jury what
8 your involvement was at, respecting the
9 industry's research efforts regarding cigarette
10 smoking and health?

11 A. What time frame, Mr. Edell?

12 Q. Did it change at different points in
13 time?

14 A. Yeah.

15 Q. When was your earliest involvement,
16 tell us when that was and what was your
17 involvement regarding the industry research
18 respecting cigarette smoking and disease.

19 A. Now, I'm not quite sure whether it was
20 at the time that I became president of USA or
21 whether I became president of the corporation.

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1 smoking and dog issue?

2 A. That's correct, sir.

3 Q. I am going to show you a document we
4 have marked as 14H13. It is a memorandum from
5 Mr. Millhiser to Mr. Paul D. Smith, April 17,
6 1970. It is marked "confidential"; is that
7 correct, sir?

8 A. Yes. Uh-huh.

9 Q. And tell the jury who Paul D. Smith was
10 or is?

11 A. He was a Philip Morris lawyer.

12 Q. Mr. Millhiser in 1970, what position
13 was he in?

14 A. I don't remember now.

15 Q. The subject of the memorandum is the
16 smoking dogs; is that correct?

17 A. Yes. That's correct.

18 Q. And will you tell the jury who received
19 copies of this document?

20 A. Mr. Goldsmith, Mr. Landry and
21 Mr. Holtzman.

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1 It was at one time that I then attended meetings
2 of the Council for Tobacco Research.

3 Q. That was your only involvement?

4 A. Yes.

5 Q. Respecting research performed by the
6 cigarette industry into cigarette-related
7 diseases?

8 A. Well, the industry efforts through the
9 Council of Tobacco Research, I had nothing to do
10 with that until I became a director of the
11 Council for Tobacco Research and then it involved
12 strictly matters such as reports by the Council
13 for Tobacco Research and budgetary issues,
14 matters of that kind.

15 Q. Weren't you involved in a committee
16 established by the industry to oversee all of the
17 industry's research, including both through the
18 CTR, that is the Council for Tobacco Research, as
19 well as other independent projects?

20 A. I don't recollect being on such a
21 committee.

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1 Q. Can you tell us why you would be
2 receiving copies of this document relating to an
3 issue that you say you are not involved in?

4 A. No.

5 Q. It doesn't refresh your memory, I
6 assume?

7 A. No. It does not.

8 MR. GARNICK: Mr. Edell in order to
9 avoid interrupting the deposition, which I do not
10 want to do, can we have a continuing
11 understanding with respect to all of the
12 documents that might come from the, what I will
13 call the Bleily collection, the 37,000 or the
14 39,000, the stipulation we discussed before, is
15 it in effect?

16 MR. EDELL: Same one we agreed to
17 earlier?

18 MR. GARNICK: Yes.

19 MR. EDELL: Yes. That's for the whole
20 deposition, not just this morning.

21 MR. GARNICK: Okay, I understood it to

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1 Q. You don't remember spending a number of
2 years on that committee reviewing and determining
3 what research should or should not be funded by
4 the industry respecting cigarette smoking and
5 disease?

6 A. I remember being on the board of CTR
7 but no special committee. I have no recollection
8 of that.

9 Q. Let's see if we can refresh your
10 memory. I'll first show you a document we have
11 marked as Plaintiff's Exhibit 14075. It is a
12 letter from William Smith, I believe, do you know
13 who William S. Smith was?

14 A. No. I don't remember.

15 Q. You don't remember him being chairman
16 of R. J. Reynolds?

17 A. No.

18 Q. It is on the letterhead of R. J.
19 Reynolds?

20 A. Okay. I'll take your word for it.

21 Q. It says William S. Smith, chairman,

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1 yes?
2 A. Yes.
3 Q. Dated April 29, 1974?
4 A. Correct.
5 Q. Am I correct?
6 A. Correct.
7 Q. It says addressed to H. H. Ramm. Did
8 you know Henry Ramm?
9 A. I think he was a Reynolds lawyer, I'm
10 not sure.
11 Q. He was a Reynolds lawyer and then went
12 in-house with the Council for Tobacco Research,
13 the independent research entity we've been
14 discussing?
15 A. Yes.
16 Q. The document states: Agreement has now
17 been reached with each of the major manufacturers
18 as to their representative who will serve on a
19 committee to study the research programs funded
20 by our industry, both through CTR and independent
21 projects that are brought to us from time to

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1 is 25 years ago.
2 Q. I understand. Let's see if we can
3 again refresh your memory a little bit. Figure
4 if we maybe go through the years, we can show you
5 how long you were involved in that effort, it
6 might jog your memory.
7 MR. GARNICK: Objection and move to
8 strike that statement by counsel.
9 Q. Going to show you a document -- these
10 are multiple documents. I don't want to confuse
11 the matter.
12 Plaintiff's Exhibit 13457, it is a
13 letter from David Hardy, again, the lawyer who
14 represented Philip Morris and who was very much
15 involved in the industry's research efforts,
16 correct?
17 A. Correct.
18 Q. And it is addressed to a number of
19 individuals, William Bates, you remember him as
20 being a member of what you will see in this
21 correspondence referred to as the Research

1 fine. The following individuals will represent
2 their companies, and it is hopeful this committee
3 can have their first meeting promptly: Curtis H.
4 Judge. He was CEO of Lorillard, right?
5 A. Right.
6 Q. Clifford H. Goldsmith, Philip Morris,
7 Inc., H. H. Roemer, R.J. Reynolds Tobacco
8 Company. Do you know him?
9 A. I don't remember him.
10 Q. Cyril S. Hetsky?
11 A. I don't remember him. Hughes I
12 remember.
13 Q. Hughes was in research; is that right?
14 A. I think he was.
15 Q. For Brown & Williamson, sir?
16 A. Yes. That's correct.
17 Q. William W. Bates, research for Liggett
18 Myers?
19 A. Right.
20 Q. David Hardy, you know who David Hardy
21 was?

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1 Liaison Committee, Dr. Bates was a member,
2 correct?
3 A. I don't remember. If you say so, he
4 was.
5 Q. If you will look at the earlier
6 document, which is 14075, do you have it in front
7 of you?
8 A. Yes. You asked me if it was correct, I
9 don't remember it. It says so in here, it must
10 be.
11 Q. Okay. Clifford Goldsmith. You are
12 listed on there?
13 A. That's me.
14 Q. And you are also listed in Mr. Smith's
15 letters setting forth the individuals who will
16 serve on this committee, as is Mr. Judge,
17 correct?
18 A. Right.
19 Q. And Dr. Hughes?
20 A. Right.
21 Q. Just going back and forth. And

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1 A. Yes.
2 Q. He was the outside lawyer who was very
3 much involved in gather smoking and health
4 litigation funded by the industry, correct?
5 A. I remember him.
6 Q. He represented Philip Morris in
7 litigation?
8 A. Yes. He did.
9 Q. He represented other tobacco companies,
10 correct, in litigation?
11 A. I don't know about that.
12 Q. His firm is Shook Hardy & Bacon,
13 correct?
14 A. Correct.
15 Q. Does this refresh your memory that you
16 were in a committee established to review the
17 industry smoking and health litigation -- I'm
18 sorry -- research?
19 A. It does not, I'm sorry.
20 Q. It doesn't. I'm sorry, sir?
21 A. I say I don't remember that at all. It

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1 Mr. Roemer, correct?
2 A. Right.
3 Q. And Horace Kornegay is listed. He
4 wasn't part of this committee directly, he was
5 the head of the Tobacco Institute, correct?
6 A. Correct.
7 Q. And then we have William Kloepfer, he
8 was public relations counsel to the Tobacco
9 Institute, correct?
10 A. If you say so.
11 Q. His name sound familiar to you?
12 A. His name sounds familiar.
13 Q. Leonard Zahn, public relations counsel
14 for the Council for Tobacco Research?
15 A. I remember his name.
16 Q. And it encloses a letter from Ed
17 Jacobs. You know who Ed Jacobs was?
18 A. I don't recollect what his job was.
19 Q. You remember he was a lawyer though
20 involved, another lawyer involved in the
21 industry's research efforts?

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1 A. I don't remember that.
2 Q. It refers to the Research Liaison
3 Committee. This doesn't refresh your memory that
4 you were on the Research Liaison Committee?
5 A. No. It does not.
6 Q. Okay.
7 A. Again, I must tell you, I sound
8 evasive, but I don't remember it.
9 Q. I'm going to keep working at it and see
10 if I can jog your memory.
11 A. I'm sorry, but I just do not remember.
12 Q. Let's move to 1976, two years after the
13 establishment of the Research Liaison Committee.
14 I'm going to show you Exhibit 13379, it
15 is document on the letterhead of Philip Morris
16 from Dr. Wakeham to whom, sir?
17 A. To me.
18 Q. Clifford H. Goldsmith, July 30, 1976,
19 and will you please tell the jury what the
20 subject of the memorandum is?
21 A. Comments on the meeting of the Research

1 Council for Tobacco Research"?
2 Q. In other words, there was research, for
3 example, at UCLA and other places, that was
4 funded outside of the Council for Tobacco
5 Research, okay?
6 A. By whom?
7 Q. Directly by the companies. You don't
8 remember that?
9 A. The company funded research at such a
10 place as, for example, UCLA?
11 Q. Correct.
12 A. On smoking and health outside of the
13 Council for Tobacco Research?
14 Q. Correct.
15 A. I don't remember that.
16 Q. You are not aware of that, or you don't
17 remember that being the case?
18 A. I don't remember that.
19 Q. Are you aware -- well, you are aware
20 that there was a committee set up to look at the
21 industry-funded research, is that correct?

1 Liaison Committee at CTR on July 28th, 1976.
2 Q. You didn't attend that meeting, but
3 there were other representatives of Phillip Morris
4 at that meeting in your state; is that correct?
5 A. Alex Holtzman was there.
6 Q. And Dr. Wakeham was there?
7 A. And Dr. Wakham was there.
8 Q. Right?
9 A. Correct.
10 Q. And attached to it is the outline of
11 the agenda at the meeting. Do you have any
12 reason why you were getting a copy of this?
13 A. I suppose Dr. Wakeham felt he should
14 keep me informed.
15 Q. For any particular reason he should
16 keep you informed of the efforts of the Research
17 Liaison Committee?
18 A. I can't guess at that.
19 Q. Was there anything about your position
20 with the company that would have led Dr. Wakeham
21 to have sent you copies of such documents?

1 A. According to what you just showed me,
2 yes.
3 Q. Are you aware of what the results were
4 of that committee, the committee's efforts?
5 A. No. I'm not.
6 Q. Would you be surprised to find out that
7 the result of their review led them to conclude
8 that much of the research didn't relate to
9 cigarette smoking and health?
10 MR. HAFETZ: Objection to form.
11 A. How can I know today whether I would
12 have been surprised 26 years ago?
13 Q. No, I'm asking you today, sir.
14 A. I don't know whether all the work by
15 the council was directly related to smoking and
16 health or was only related in a more indirect
17 manner. I don't know that.
18 Q. You don't remember your involvement in
19 that procedure?
20 A. No. I do not. I really do not.
21 Q. You understand though that the

1 A. Probably, because I was, at that time
2 president of Philip Morris USA.
3 Q. Do you know what the results were of
4 the industry's review of the research that was
5 funded both independently and through the Council
6 for Tobacco Research?
7 MR. HAFETZ: Objection.
8 A. Could you restate the question? I
9 don't fully understand it.
10 Q. Sure. Can we agree that there was a
11 committee, apparently, based upon these
12 documents?
13 A. That's correct.
14 Q. That reviewed the research funded by
15 the members of the tobacco industry?
16 A. That's correct.
17 Q. Both research funded through the
18 Council for Tobacco Research and independent of
19 the Council for Tobacco Research; is that a fair
20 statement?
21 A. What do you mean by "independent of the

1 industry-funded research is under scrutiny by the
2 Federal Government; is that correct?
3 A. I don't know about that, no.
4 Q. You weren't told that by your lawyers?
5 A. No.
6 MR. HAFETZ: Direction not to answer.
7 Direction not to answer any questions as to what
8 he was told by his lawyer.
9 Q. I'm going to show you a document which
10 has been marked as 13435. It relates to a site
11 visit at UCLA.
12 The second paragraph says:
13 Mr. Goldsmith tried to get Cline and the
14 vice-president of medical affairs, Rasmussen, to
15 commit themselves to the proposition that the
16 relationship between cigarette smoking and
17 diseases associated with the habit is not a
18 simple cause and effect one.
19 Do you see that, sir?
20 A. That's what it says here.
21 Q. You don't remember the research that

1 was being performed at UCLA with the entity with
2 which Dr. Cline was associated?
3 A. No, Mr. Edell, I do not.
4 Q. It goes on further to state that: I
5 don't think Mr. Goldsmith was happy with this
6 answer given by Dr. Cline.
7 Do you see where he says the reply you
8 got, being Mr. Goldsmith, was what we expect. We
9 know the situation is complex and that it needs
10 research. That is why we are asking for funds,
11 but we can't control what some of our colleagues
12 do and say. As a matter of fact, there are some
13 criticisms going to so-and-so.
14 Do you see that, sir? That doesn't jog
15 your memory of your discussion?
16 A. No. It does not jog my memory, but I'm
17 interested in it says: That's why we are asking
18 for funds. That doesn't say to me that they were
19 doing research at the time.
20 Q. You don't remember that Dr. Cline was
21 doing work out of UCLA?

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1 content of cigarette smoke for DDT?
2 A. No, I don't remember.
3 Q. I show you a document we marked as
4 13361. It is a letter of July 17, 1968, together
5 with a letter from Dr. Wakeham to Dr., Professor,
6 I'm sorry, Chopra, at North Carolina Agricultural
7 and Technical State University. I'm not sure
8 whether it was included in the original document,
9 but it certainly follows the Bates stamp marking
10 from the files of Philip Morris.
11 Do you see this memo from Dr. Wakeham
12 to you in July of 1968?
13 A. Yes, I do, sir.
14 Q. Why would you be receiving a memo
15 respecting research being conducted at the
16 University of Kentucky.
17 MR. HAFETZ: Objection.
18 MR. EDELL: That's a form objection,
19 counsel?
20 MR. HAFETZ: Yes, sir. Speculation.
21 A. I don't know why Dr. Wakeham would send

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1 A. No.
2 Q. On the second page of the document,
3 paragraph number four, it says: The evening
4 before the presentation by UCLA, Mr. Goldsmith
5 was vehement in a discussion with about Bill
6 Shinn about the benefits of smoking.
7 Mr. Goldsmith is anxious to find some reputable
8 investigator who would make the study and who
9 would write it up for publication.
10 Do you see that, sir?
11 A. Yes, sir. I do.
12 Q. Do you remember such a discussion?
13 A. No.
14 Q. Do you remember being a proponent of
15 someone performing a risk benefit study about
16 cigarette smoking?
17 A. I don't remember being a proponent of a
18 study, but I remember being interested in the
19 beneficial effects of smoking.
20 Q. Did you find a researcher to perform
21 such a study?

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1 it to me. I guess he wanted to keep me informed.
2 Q. Was there anything in your position
3 with Philip Morris that would have warranted him
4 sending you a memorandum like this?
5 A. I was at that time chief of operations.
6 Q. Well, did that have anything to do with
7 industry-funded research?
8 A. I'm sorry, I have to finish reading the
9 memo.
10 Q. Sure go ahead. I'll give your lawyer
11 one so he can read it a little easier?
12 A. I'm either not reading it correctly or
13 I don't quite understand what this has to do with
14 the DDT.
15 Q. If you take a look at the --
16 A. The second page.
17 Q. The letter that Dr. Wakeham sent in
18 response to the inquiry, I'm somewhat unsure as
19 to why Dr. Wakeham would be writing on behalf of
20 the Council for Tobacco Research.
21 He was not scientific director of the

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1 A. To my knowledge, we did find
2 anybody who would do it to our satisfaction.
3 Q. In the whole world, you couldn't find
4 anybody, Philip Morris Europe, Philip Morris USA,
5 Philip Morris International, with all its
6 facilities all over the world, couldn't find one
7 investigator to do that kind of research?
8 A. No. To my knowledge, Mr. Edell, it was
9 not done. That doesn't diminish my interest in
10 it.
11 Q. Do you remember -- excuse me one
12 second.
13 Do you recall, sir, that DDT was
14 identified in cigarettes? DDT, do you know what
15 DDT is?
16 A. Yes. Uh-huh.
17 Q. Tell the jury what DDT is.
18 A. It is a chemical used against insects.
19 Q. And do you remember that there was
20 research being performed at the University of
21 Kentucky under Dr. Stokes investigating the

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1 Council for Tobacco Research, is he?
2 A. No, he wasn't.
3 Q. He was vice-president corporate
4 research and development for Philip Morris,
5 correct?
6 A. That's correct.
7 Q. But he writes Professor Chopra: I'm
8 sure the Council for Tobacco Research USA would
9 not want you to make brand comparisons on the
10 degradation of DDT, TDE and what is the last
11 word, sir?
12 A. I don't know.
13 Q. You are not familiar with it?
14 A. No.
15 Q. Some other type of pesticide probably?
16 A. I don't know.
17 Q. In cigarette smoke. Therefore, I
18 suggest in reply to the letter of July 9 that you
19 use in your tobacco studies the reference
20 cigarettes which will be available through the
21 tobacco research laboratory of the University of

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52259-7915

1 Kentucky in Lexington, Kentucky. Your inquiry
2 should be addressed to Dr. G. W. Stokes, direct
3 for of the laboratory.

4 I think that a fair reading of this now
5 that is the industry developed a reference
6 cigarette, correct, at the University of
7 Kentucky?

8 A. Yes.

9 Q. At the University of Kentucky?

10 MR. GARNICK: Objection to the form.

11 Q. Is that right? Sir?

12 A. Yes.

13 Q. Sort of a vanilla cigarette, in other
14 words, it wasn't specific to any particular
15 brand; is that right?

16 A. That's correct.

17 Q. And for some reason, there was concern
18 on Dr. Wakeham's part that the researcher, who I
19 assume is Professor Chopra, not conduct a test
20 with respect to the degradation of DDT and TDE of
21 brands that were on the market.

1 MR. HAFETZ: Objection.

2 MR. EDELL: Is that correct?

3 A. I don't understand why. I have no idea
4 why Dr. Wakeham wrote the memo, I'm not familiar
5 with it, and I don't know anything about that
6 work at all.

7 Q. Were you aware that there was found
8 in cigarettes?

9 A. I know there was DDT found on tobacco.

10 Whether it migrated into the smoke of cigarettes,
11 I don't recollect.

12 Q. Certainly one way to have found out
13 about it would have been to let Professor Chopra
14 buy cigarettes in a store and do his studies on
15 the store, as opposed to giving him these
16 reference cigarettes, correct?

17 MR. HAFETZ: Objection. Objection to
18 form.

19 A. Mr. Edell, I don't know who Professor
20 Chopra was, and I have no recollection of it, and
21 I don't know why Dr. Wakeham wrote the memorandum

1 or anything about it.

2 Q. How would you determine whether there
3 was DDT or TDE in Phillip Morris cigarettes,
4 unless somebody tested your actual cigarettes?

5 A. If we wanted to determine that, I'm
6 sure we must have had the ability to do that on
7 the inside. I don't know or understand why we
8 would have used Professor Chopra. I don't know
9 anything about that.

10 Q. And during the time period that you
11 were president of Phillip Morris USA, when was
12 that again?

13 A. I think it was from 1970 to 1978.

14 Q. That's eight years?

15 A. No. From '72 to '78.

16 Q. Six years?

17 A. Yes.

18 Q. In that regard, you were responsible
19 for sales of cigarettes throughout the United
20 States?

21 A. I was responsible for the operation of

1 the corporation throughout the United States.
2 Q. Including sales, profits of the
3 company?

4 A. Pardon me, sir?

5 Q. Profits?

6 A. Profits.

7 Q. Approximately what was the volume of
8 sales in the United States of Phillip Morris
9 cigarettes during that time period?

10 A. I don't remember that.

11 Q. More than \$10 billion units, more than
12 \$20 billion units, more than \$30 billion units?

13 MR. HAFETZ: Per year?

14 MR. EDELL: Per year.

15 A. I think it was something in the
16 neighborhood of \$100 billion, but my recollection
17 for figures is very bad. Don't take me -- I
18 don't remember it.

19 Q. A lot of people were smoking Phillip
20 Morris cigarettes?

21 A. Yes, sir.

1 Q. Did you tell any of them that there
2 might be DDT or TDE or any other pesticides in
3 the cigarettes they were smoking?

4 MR. HAFETZ: Objection.

5 A. Not to my recollection, no.

6 Q. Did you do anything to determine
7 whether there was any pesticides in the
8 cigarettes they were smoking?

9 A. I don't remember whether we did or
10 whether we didn't, but I know that if there was
11 it had to be a very small quantity.

12 Q. You don't know whether they did or
13 didn't do it, you don't know what the results
14 were, but you are confident it was only a small
15 amount?

16 A. That's correct.

17 Q. Because if it wasn't a small amount, it
18 might be potentially harmful to the smokers?

19 A. Because if it were more than a small
20 amount, my memory probably wouldn't be as vague
21 on it as it is.

1 Q. Why would your memory again on whether
2 it -- what is a large amount?

3 A. It wasn't an important issue.

4 Q. It wasn't an important issue,
5 pesticides weren't?

6 A. That's my point, at that time it was
7 not an important issue, not to my recollection.

8 Q. It would only be an important issue, if
9 you helped make it an important issue, correct?

10 A. It would be an important issue maybe if
11 it were present in large quantities.

12 Q. What do you mean by large quantities?

13 A. I can't quantify it Mr. Edell.

14 Q. You don't know what you mean when you
15 say large quantity?

16 A. I can't quantify it, no.

17 Q. You are telling this jury that you
18 don't know whether there was research performed,
19 you don't know what the results were, but you
20 know that whatever those research results might
21 have been reflected that there was a small

1 amount, if any?
2 A. I am telling the jury that it was not
3 an important subject at the time.
4 Q. It wasn't an important subject for you,
5 correct?
6 A. I did not consider it an important
7 subject for the public at large.
8 Q. What are epidemiological studies?
9 A. They are studies about the, I believe,
10 they are studies about the health of the public.
11 Q. And how many studies did Philip Morris
12 fund, epidemiological studies did Philip Morris
13 fund regarding the health of the public, as it
14 relates to cigarette smoking, during the six
15 years you were president of Philip Morris USA?
16 A. I'm sorry, I can't quantify it.
17 Q. Would it surprise you if there were
18 none?
19 MR. HAFETZ: Objection to form.
20 Q. There were no studies funded by Philip
21 Morris, no epidemiological studies?

1 that the study was done correctly, right?
2 A. That is correct.
3 Q. The way you make sure it is done
4 correctly is you have it done to your
5 specification, correct?
6 A. That's correct.
7 Q. But you didn't have any done to your
8 specifications, correct?
9 A. Not to my knowledge.
10 Q. Because if you conducted it to your
11 specifications, if you addressed all those
12 problems and the results were harmful to the
13 industry, in other words, it should a
14 relationship, it would be hard to discredit that;
15 isn't that correct?
16 A. I have no knowledge of our wanting to
17 discredit any studies. You are talking about
18 epidemiological studies, I don't know what you
19 are referring to, really.
20 Q. It is sort of more a question of logic,
21 Mr. Goldsmith. If you have, as president of

1 A. I don't know whether there were or not.
2 Q. Wasn't a big issue?
3 A. I just can restate what I answered. I
4 said I don't know whether there were or not.
5 Q. You seemed to suggest in your earlier
6 answer, that if it was a big issue, you would
7 remember it, right?
8 A. Right.
9 Q. I want to know whether or not the
10 epidemiological studies were a big issue, when
11 you were president from 1972 to 1978?
12 A. They probably were, but not necessarily
13 conducted by my company.
14 Q. Why didn't you conduct them?
15 A. I'm assuming they were not conducted
16 because there were lots of others who did those
17 studies. I really don't know enough about
18 epidemiology studies to answer you correctly.
19 Q. But it was an important health issue at
20 that time, those epidemiological studies,
21 correct?

1 Philip Morris, you hire the best experts in the
2 world, which you could have done, correct?
3 MR. HAFETZ: Move to strike. Objection.
4 Q. Was there any restriction on you as to
5 whether you could hire the best statisticians in
6 the world?
7 A. Not to my knowledge.
8 Q. Certainly there was a lot of money at
9 Philip Morris, very profitable business, the
10 tobacco business, is that correct?
11 A. That's correct.
12 Q. You could have used that money to hire
13 the best epidemiologists, the best statisticians
14 in the world, correct?
15 A. Correct.
16 Q. You could told them I want you to do an
17 epidemiological study regarding cigarette smoking
18 and disease and I want you the address this
19 issue, this issue, this issue, and that issue,
20 all of the issues for control and to check the
21 statistics and everything else; isn't that

1 MR. GARNICK: Objection to form.
2 A. If the studies were correct, they could
3 have been. But they were statistical in nature,
4 I guess.
5 Q. So is it your testimony that any
6 statistical study is unimportant?
7 A. That wasn't what I said.
8 Q. Any statistical study respecting
9 cigarette smoking and disease is unimportant?
10 A. That's not what I said.
11 Q. Oh, it could be important?
12 A. Could be important.
13 Q. Under what circumstance could it be
14 important?
15 A. Providing the statistics were correct
16 and providing the sample was correct.
17 Q. How do you ensure that the statistics
18 are correct and the samples are correct?
19 A. You would ask that question to a
20 statistician. I'm not a statistician.
21 Q. You would certainly have to make sure

1 correct?
2 MR. HAFETZ: Objection to form.
3 Q. You could have done that, couldn't you?
4 A. Probably.
5 Q. But you didn't, did you?
6 MR. HAFETZ: Objection.
7 A. To my knowledge, we did not.
8 Q. But you do remember statements by
9 yourself and others in the industry casting doubt
10 on the statistical studies that were performed by
11 others; is that correct?
12 MR. GARNICK: Objection to form.
13 A. I'm sure that must be correct.
14 Q. And getting back to my original
15 question, it would be awfully hard to cast doubt
16 on the statistical studies, if you were the one
17 who set them up and provided the protocol for
18 conducting those studies, isn't that correct,
19 Mr. Goldsmith?
20 MR. GARNICK: Objection to form.
21 A. I can't really answer whether it would

1 be difficult or not, because the people who set
2 it up could have set it up badly. I don't know
3 the answer to that, I really don't.
4 Q. You don't think that would be more
5 difficult?

6 A. Probably would be more difficult.

7 Q. And it is much easier to tear things
8 down than it is to build things, isn't that
9 true?

10 MR. HAFETZ: Objection to form.

11 A. Honestly, Mr. Edell, I don't know
12 anything about tearing down or building things
13 up. Sometimes people are more difficult to tear
14 things down than to build them up.

15 Q. If you didn't do the biological research
16 yourself, you don't get results that might be
17 harmful to you, correct?

18 A. First, you gave me a hypothetical thing
19 about tearing things down and building things up,
20 what an awfully general question.

21 Q. Well, let's get more specific. Okay?

1 responsibilities, as vice-president research and
2 development and your reporting responsibilities
3 to Cliff Goldsmith, but he can call you anything
4 just about, right?

5 A. Absolutely.

6 Q. Do you have any idea what Mr. Cullman
7 was referring to when he talked about
8 Dr. Wakeham's responsibility for reporting to
9 you?

10 MR. HAFETZ: Objection.

11 A. No. I do not.

12 Q. Did you have any involvement with
13 respect to the issue of these epidemiological
14 studies?

15 MR. GARNICK: Objection to form.

16 Epidemiological studies or biological studies?

17 MR. EDELL: Statistical studies.

18 Q. We talked about statistical studies,
19 correct?

20 A. What kind of statistical studies, Mr.
21 Edell?

1 Q. Studies of human beings, retrospective
2 and prospective, you know the difference between
3 the two?

4 A. Yes.

5 Q. Different types of approaches that
6 epidemiologists take to a certain cohort, that
7 cohort being a group of people exposed to a
8 certain something, in the context of this
9 litigation, it is cigarette smoke, and they
10 compare it to a similar cohort group of people
11 that weren't exposed to it. Those are the kinds
12 of statistical studies I'm talking about. Okay?

13 A. Okay.

14 Q. Weren't you involved with respect to
15 certain questions as to the kinds of studies that
16 had been performed and whether studies should be
17 performed by the industry?

18 A. I really don't recollect being
19 involved, no.

20 Q. Let me see if I can refresh your
21 memory. 13370.

1 A. Okay.
2 Q. The reason you didn't do the biological
3 research is because you didn't want to have
4 results that might be inconsistent with your
5 statement it hasn't been proven that cigarette
6 smoking causes disease, correct?

7 A. No. I think that's your
8 interpretation.

9 Q. You are going to testify under oath
10 this that wasn't one of the reasons why you
11 didn't do biological research, sir?

12 MR. HAFETZ: Objection to the form.

13 A. I can't tell you why they were or why
14 they were not done. I can only tell you they
15 were not done.

16 Q. Let's see if we can figure out why they
17 weren't done, okay?

18 MR. HAFETZ: Move to strike. Just ask
19 the questions.

20 Q. Would you like to figure out why they
21 weren't done, Mr. Goldsmith?

1 MR. HAFETZ: Objection to form. Just
2 ask the question.
3 MR. EDELL: I did.
4 MR. HAFETZ: No, you asked him what he
5 likes.

6 Q. Would it be important to find out why
7 the research wasn't conducted, sir?

8 A. I can tell you that there is no
9 question, there was no need to do research, there
10 is no question that with the research done there
11 is information that smokers die sooner, but there
12 is no information available they die sooner
13 because they smoke.

14 Q.

Show you a document marked as 13390, a
memorandum from Mr. Cullman to Dr. Wakeham, and
this again relates to biological research. It
shows a copy going to you.

On the bottom of it is February 24,
1970, it says confidential on top, it says all
these requests for special assignments, of
course, do not affect your regular

A. Mr. Edell, I want to say this at this
particular point, there was a small group that
managed Philip Morris, and everybody had their
own expertise, and my expertise was in the
technical manufacturing end of the business. It
really wasn't in this sort of area.

Q. When you say "this sort of area" are
you talking about cigarette smoking and health?

A. I'm talking about epidemiological
studies or anything of that nature.

Q. Well, you were involved in running the
company, correct?

A. Yes. I was.

Q. In 1970, 1969?

A. But I have my own specialty in which I
would have an important role. The smoking and
health area was not an area in which I was
playing an important role, other than as you
will -- other than as the product itself.

Q. Why would they put you on the Research
Liaison Committee to review the Industry's

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1 research if you were, in fact, as ignorant of the
2 subject as you claim to be?

3 MR. HAFETZ: Objection.

4 Q. I don't mean ignorant in a derogatory
5 way?

6 A. Claim to be though is derogatory.

7 Q. That is derogatory, you are right.

8 A. Thank you.

9 Q. Let me rephrase the question. Okay.

10 Can you give us any explanation as to why, given
11 your area of expertise, Philip Morris decided to
12 appoint you as the individual to serve as their
13 representative on the Research Liaison Committee,
14 the committee which was charged with a review of
15 the relevance of the industry's research to the
16 question of cigarette smoking and health?

17 MR. HAFETZ: Objection.

18 A. I think I probably was the best there
19 was available. It was not an area of my
20 expertise.

21 Q. Let me show you a document 13370. It

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1 A. I don't know that. I can't answer.

2 Q. Is it fair to say, sir, and maybe
3 Mr. Weissman was wrong. My recollection of his
4 testimony was that in a given year net profits
5 were somewhere between seven and 10 percent of
6 gross sales; Is that consistent with your
7 recollection?

8 A. I don't remember the figures, but if
9 Mr. Weissman said it, it must have been correct.

10 Q. And gross sales worldwide were
11 somewhere in the area of \$35 billion. That means
12 you had \$3 billion approximately every year to
13 use, if you needed to, to conduct this daunting
14 research that the Federal Government was funding,
15 correct?

16 MR. GARNICK: Objection to form.

17 MR. HAFETZ: What time frame, what
18 years?

19 MR. EDELL: The years you were
20 president, if it makes it easier for you.

21 A. I really --

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1 is a memorandum from Dr. Wakeham to Mr. Cullinan,
2 III, January 27, 1969.
3 This document sets forth the various
4 retro... various prospective studies,
5 epidemiological studies conducted to determine
6 whether there is a relationship between cigarette
7 smoking and disease, correct?

8 A. Correct.

9 Q. Are you familiar with any of these
10 studies?

11 A. I know the name of some of them, I know
12 the Hammond and Horn, that certainly sounds
13 familiar. Framingham does.

14 Q. You are aware of the Framingham study
15 being probably one of the largest epidemiological
16 studies ever conducted?

17 A. I'm aware of that.

18 Q. Clearly the results of that research
19 showed a relationship between cigarette smoking
20 and heart disease, correct?

21 A. Correct.

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1 Q. You never funded any research to
2 determine whether or not there was any flaws in
3 the Framingham epidemiological studies, correct?

4 MR. HAFETZ: May I just ask who you is,
5 Mr. Edell?

6 MR. EDELL: You as Clifford Goldsmith
7 individually or as the person who was running
8 Philip Morris USA.

9 A. What did you want for me to fund?

10 Q. Research to determine whether or not
11 the Framingham, Massachusetts, study, one of the
12 largest epidemiological studies ever conducted,
13 was incorrect in its conclusion that cigarette
14 smoking was related to heart disease?

15 MR. HAFETZ: Objection.

16 A. I think it would have been a daunting
17 task to do that.

18 Q. Sure. But you could do it with the
19 billions of dollars of profit that your tobacco
20 company made, correct?

21 MR. GARNICK: Objection.

1 respect to cigarette smoking and its relationship
2 to disease in human beings?

3 A. I don't believe that we ever did any
4 studies of that nature. We just didn't do
5 epidemiological studies to agree or disagree with
6 any studies on the outside to my recollection.

7 Q. You didn't do any period, whether to
8 agree or disagree, correct?

9 A. To my recollection, that's correct.

10 Q. And you didn't do any in-house
11 biological research to agree or disagree,
12 correct?

13 A. We did work on animals if I recall.

14 Q. Not in-house?

15 A. We did it at INBIFO.

16 Q. Yeah, you did it in Europe because it
17 was difficult to get the results out.

18 MR. HAFETZ: Objection to form.

19 Q. Not difficult for you to get the
20 results, but difficult for the government,
21 difficult for people involved in litigation, to

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1 get the results in Germany, correct?
2 MR. GARNICK: Objection to form.
3 MR. HAFETZ: Objection to form.
4 A. I don't, you are assuming it was done
5 for that reason. I'm not agreeing with you.
6 Q. Internal documents reflect that, I'm
7 not making that assumption.
8 MR. GARNICK: Move to strike.
9 MR. HAFETZ: Move to strike.
10 MR. EDELL: He asked me what the basis
11 of my assumption was, I'm not assuming.
12 A. I just I said you are assuming. I
13 didn't ask you why.
14 Q. All right. Well, you read the
15 document. Did you not read the documents here
16 this morning?
17 A. Some of them, yes.
18 Q. Were my assumptions any different than
19 reflected in the documents that came from Philip
20 Morris' files?
21 MR. HAFETZ: Objection to form.

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1 Q. Do you think it would have been a good
2 idea to have performed a risk benefit study for
3 smokers telling them that if we gave you a
4 cigarette that was a little bit stronger, you
5 might be reducing your chances of developing
6 cancer --
7 MR. GARNICK: Objection to form.
8 Q. -- that the people who were exercising
9 their own risk benefit analysis might have chosen
10 the stronger tasting cigarette?
11 MR. GARNICK: Objection to form.
12 A. What you are doing is you are equating
13 tumors on the skin of mice with human cancer and
14 I can't make that, that would have been an
15 implied warranty I wouldn't have been willing to
16 make.
17 Q. So you did it because you didn't want
18 to mislead people; is that right?
19 A. I didn't say that's not why we didn't,
20 but I say it would have been misleading.
21 Q. Just so the jury understands, in terms

1 A. I don't know.
2 Q. You want to read them again?
3 A. No. I don't want to read them again.
4 Q. But Philip Morris didn't do any
5 biological research in the United States in its
6 own facilities, correct?
7 A. Not in its own facilities, to my
8 knowledge.
9 Q. Didn't do any inhalation studies?
10 A. Not to my knowledge.
11 Q. Didn't do any mouse painting studies?
12 A. Not that I know of.
13 Q. Now, you are aware that the mouse
14 painting studies reflected different degrees of
15 carcinogenicity of different types of tobacco,
16 correct?
17 MR. HAFETZ: Objection to form.
18 A. Yes.
19 Q. For example, burly tobacco, tell the
20 jury what burly tobacco is?
21 A. It is tobacco grown in Kentucky and

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1 of cancer research, laboratory animals and skin
2 painting studies have been the yardstick for
3 carcinogenicity for decades; Is that correct?
4 A. Yes.
5 Q. The mouse painting tests, for example,
6 is widely accepted throughout the world as a test
7 for carcinogenicity of various substances,
8 correct?
9 MR. GARNICK: Objection to form.
10 A. Could you restate the question? I'm
11 not sure I can respond.
12 (The record was read by the reporter.)
13 A. Carcinogenicity of various substances?
14 Q. Yes. Of various substances that are
15 either being sold to human beings or people,
16 companies want to sell to human beings,
17 pharmaceutical industry uses it, correct?
18 A. Mouse painting?
19 Q. Yes.
20 A. I'm not aware of it.
21 Q. They don't use animal studies for

1 Tennessee.
2 Q. Pure burly tobacco smoke condensate
3 produces very limited tumors in animals,
4 correct?
5 A. I don't remember exactly, but probably.
6 Q. Was there a reason why Philip Morris
7 didn't use just burly tobacco as opposed to using
8 other kinds of tobacco that produced substantial
9 numbers of tumors in laboratory animals?
10 A. Yes.
11 Q. Why?
12 A. Taste.
13 Q. Wouldn't taste as good?
14 A. It would have blown your head off.
15 Q. In other words, it didn't taste good?
16 A. No, it was very strong.
17 Q. Strong. Did you ever, in terms of, and
18 correct me if my memory is wrong, but you were at
19 the one at Philip Morris who wanted to do certain
20 risk benefit studies, correct?
21 A. That's correct.

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1 carcinogenicity?
2 A. I don't know.
3 Q. Don't you think it would be appropriate
4 for you to determine whether or not every other
5 manufacturer of substances uses animal studies to
6 determine whether or not their products might be
7 carcinogenic in human beings?
8 MR. GARNICK: Objection to form.
9 Q. Before you decide it is not applicable
10 to your product?
11 MR. GARNICK: Objection to form.
12 A. I remember a conversation with the head
13 of Memorial Hospital during a luncheon, I just
14 happen to remember a conversation, he said that
15 the cancer on the skin of mice in his opinion
16 just meant that when mice were painted with
17 cigarette tar, they got cancer on their skin, but
18 he could not equate it with humans.
19 Q. You distinctly remember that
20 conversation?
21 A. I do.

1 Q. How about all of the communications
2 that you received over the years that reflected
3 that skin painting, mouse painting studies was
4 the yardstick to determine carcinogenicity in
5 human beings?

6 A. I really don't think that that was ever
7 really claimed.

8 Q. You are aware of research that was
9 being performed in Europe, correct? European
10 tobacco companies readily accepted mouse painting
11 studies as a barometer for determining
12 carcinogenicity, isn't that correct?

13 A. I wasn't aware of that.

14 Q. Did you have any contact with European
15 cigarette manufacturers?

16 A. Not in that -- first of all I don't
17 remember contact with them, and secondly,
18 certainly, not in this area.

19 Q. Let's talk about the people in research
20 and development at Philip Morris. Certainly,
21 Dr. Seligman knew substantially more than you did

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1 the World Health Organization or every other
2 health organization in the entire world has
3 concluded that cigarette smoking causes disease
4 in human beings, you don't have to accept that
5 either, do you?

6 MR. HAFETZ: Objection to form and
7 objection.

8 Q. Do you, sir?

9 A. No, I don't have to accept it.

10 Q. You could keep blindly walking along
11 and saying I don't accept it; isn't that correct?

12 MR. HAFETZ: Objection to form.

13 Q. It is a free country, you are allowed
14 to, aren't you?

15 MR. HAFETZ: Objection to form.

16 A. It's a free country, you are correct.

17 Q. Yes, But you have to act responsibly,
18 don't you, Mr. Goldsmith?

19 MR. HAFETZ: Objection, form.

20 Q. As a company, selling a potentially
21 harmful substance to millions of Americans and

1 as to the applicability of mouse painting studies
2 respecting tobacco carcinogenicity, isn't that
3 correct?

4 A. Doctor who?

5 Q. Seligman.

6 A. He knew more than I did.

7 Q. Yes.

8 A. He had his own opinion, I don't know
9 what it was.

10 Q. His opinion was based upon training and
11 experience, correct? You have not had any formal
12 training with respect to animals studies, have
13 you?

14 A. No. Of course not.

15 Q. Dr. Seligman?

16 A. I don't know whether he has.

17 Q. What was his training?

18 A. He was a chemist.

19 Q. In that context, do you know whether he
20 any training with respect to the constituents of
21 cigarette smoke?

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1 many more millions of people throughout the
2 world, correct?

3 MR. HAFETZ: Objection to form.

4 A. Yes.

5 Q. And the way to act responsibly is to
6 make judgments based upon the information that is
7 available; isn't that correct, or do the studies
8 yourself; isn't that correct, sir?

9 MR. HAFETZ: Objection to form.

10 A. I am not really willing to sit here and
11 tell you exactly how one acts responsibly. I
12 think that's a long and drawn out discussion.

13 Q. We have all the time in the world,

14 Mr. Goldsmith.

15 A. I don't want to go into that at this
16 stage of the game. You are telling me what you
17 feel is acting responsible, so be it.

18 Q. I show you a document marked
19 Plaintiff's Exhibit 13535. You recognize this to
20 be the letterhead of Philip Morris?

21 A. Yes. It is.

1 A. No, I don't.

2 Q. Why would you hire him if he didn't
3 have any experience in that regard?

4 MR. HAFETZ: Objection. Form.

5 Q. Sir?

6 A. He gained the experience through the
7 years he was employed there. He did not have the
8 experience when he was hired, to my knowledge, he
9 didn't.

10 Q. Do you recall him telling you that
11 mouse skin painting is the only recognized method
12 of bioassay for tobacco smoke carcinogenicity?

13 A. No. I don't recall it. But he could
14 have easily said it.

15 Q. You could have rejected that out of
16 hand, correct?

17 A. I would have listened to him, but just
18 because he said it, doesn't mean I would have
19 accepted it.

20 Q. Just because the American Medical
21 Association says it or the Federal Government or

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1 Q. It is a memorandum from R. B. Seligman,
2 to C.H. Goldsmith. Who is that? Is that you?

3 A. That's me.

4 Q. On the first page of this document,
5 Dr. Seligman summarizes its content, correct?

6 A. What's the date of the document?

7 Q. I didn't prepare this. I will see if
8 we can try to figure it out from the content of
9 the document.

10 Maybe Mr. Garnick can help us, one of
11 the Philip Morris lawyers who might be more
12 familiar with the document than I; but I don't
13 really know what it is off the top of my head.

14 Can you help us out, Mr. Garnick?

15 MR. GARNICK: Do you have a copy of the
16 document?

17 MR. EDELL: Yeah, sure.

18 MR. GARNICK: I'm sure we can get it
19 from the information we have.

20 THE WITNESS: No. Forget it. It
21 doesn't matter.

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1 Q. Doesn't matter?
2 A. No. Doesn't matter.
3 Q. Why doesn't it matter?
4 A. I want to proceed. You don't have it,
5 so I will do without it.
6 Q. First page identifies Mr. Seligman's
7 memorandum to you; is that correct?
8 A. Yes.
9 Q. He starts out by telling you that mouse
10 skin painting is the only recognized method of
11 bioassay for tobacco smoke carcinogenicity; is
12 that correct?
13 A. Well, that is what Dr. Seligman says at
14 that time, but at a later time, I know that there
15 were inhalation studies which were considered to
16 be far more accepted than mouse skin painting.
17 Q. When was that point in time?
18 A. I have no idea.
19 Q. Was it last year, ten years ago, twenty
20 years ago, you have no idea?
21 A. Twenty years ago, more so than last

1 year.
2 Q. What's that?
3 A. More so than last year, it was 20 years
4 ago. That's why I was wondering about the date,
5 but it is not that important. It doesn't
6 matter. I'm saying to you at a later time,
7 inhalation studies were considered to be more
8 important than mouse skin painting.
9 Q. Did they replace mouse skin painting
10 studies?
11 A. I think reflect if they didn't
12 replace it, they were certainly considered to be
13 far more important.
14 Q. Did Philip Morris fund any animal
15 inhalation studies?
16 A. Yes. We did at INBIFO.
17 Q. Did the results of those studies
18 reflect that animals exposed to smoke developed
19 cancer?
20 A. To my knowledge, no, they did not.
21 Q. Certainly, if the study did reflect

1 Q. To a Dr. Osdene?
2 A. Yes.
3 Q. And it relates to a meeting that
4 Dr. Carpenter had with a John Whitehead of the
5 Tobacco Research Council, UK?
6 A. Right. Now, I remember, Harrogat was
7 the work done by the British industry.
8 Q. Exactly. You see in this November 6,
9 1972 memo, Dr. Whitehead informs Dr. Carpenter
10 who informs Dr. Osdene that Harrogat has been
11 doing inhalation work for several years on a more
12 limited scale than Dr. Dontenwill, you remember I
13 referred to Dr. Dontenwill earlier, they found
14 only one tumor which was termed a squamous cell
15 carcinoma. Do you see that?
16 A. Yes.
17 Q. Dr. Whitehead seemed to feel that large
18 scale inhalation work was very much like skin
19 painting, in that it was being discontinued. Do
20 you see that?
21 A. That's what it says here, yes.

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1 Q. If it was such a valuable tool, why do
2 you think it was being discontinued?
3 A. I haven't got the faintest idea.
4 Q. What, if anything, did Philip Morris do
5 with the results that were being conveyed to them
6 regarding these animal studies conducted by their
7 colleagues abroad that reflected, Inhalation
8 studies, that reflected squamous cell carcinoma?
9 MR. GARNICK: Objection to form.
10 A. I have no recollection of it, and as
11 far as I read here, it was just one animal.
12 Q. Out of how many?
13 A. I have no idea.
14 Q. If there were two, it would be 50
15 percent?
16 A. If there were two, it would be 50
17 percent.
18 Q. We don't know. So we don't know how
19 important or unimportant that number one is, do
20 we?
21 A. You are correct, Mr. Edell.

1 that the animals developed some cancer that would
2 have been an important result, correct?
3 A. It would have been something worthwhile
4 considering, yes.
5 Q. Can you tell the jury what Harrogat is?
6 A. What.
7 Q. H-a-r-r-o-g-a-t, is that a laboratory
8 related to the Tobacco Research Council in
9 Europe? Does that refresh your memory?
10 A. No.
11 Q. Have you ever heard of the Tobacco
12 Research Council in Europe?
13 A. No. I must have heard of it, but I
14 don't remember it.
15 Q. I'm going to show you a document which
16 we have marked as 13926. It is a memorandum from
17 Dr. Carpenter, Philip Morris Research and
18 Development.
19 A. Uh-huh.
20 Q. You know Dr. Carpenter?
21 A. Yes.

1 Q. If there were ten animals and one of
2 them developed squamous cell carcinoma, that is
3 10 percent, correct?
4 A. That's correct.
5 Q. If 10 percent of cigarette smokers
6 develop lung cancer, how many Americans is that
7 in the United States?
8 A. My math isn't good enough to figure it.
9 Q. Certainly more than several million,
10 correct?
11 A. That's correct.
12 Q. So that number could be very important,
13 couldn't it?
14 A. I don't know.
15 Q. Okay. See if I can pull up another
16 document that relates to these animal studies,
17 13367, again, we're talking about inhalation
18 studies that you felt were more important than
19 the animal painting studies.
20 I'm going to show you a document marked
21 13367, it is a memorandum from Dr. Walkham to C.

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1 H. Goldsmith, January 7, 1969. I must have
2 pronounced the last name incorrectly in the
3 earlier questions, I thought it was
4 Leuchtenberger, how would you pronounce this?
5 A. Leuchtenberger.
6 Q. If I had said Leuchtenberger, would you
7 have recognized the name?
8 A. I have no idea who he is.
9 Q. Let's see if we read this document and
10 it refreshes your memory that Cecilia and Rudolph
11 Leuchtenberger of the Swiss Institute for
12 Experimental Cancer Research had for many years
13 followed two lines of investigation regarding the
14 effects of cigarette smoke, one is the effects of
15 smoke inhalation leading to tissue changes in the
16 lungs of mice and the other relates to the kidney
17 tissues and lung organ cultures?
18 MR. HAFETZ: Is there a question?
19 Q. Yes. I asked to see if it would
20 refresh his memory. Do you want it read back?
21 A. Do I remember this?

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1 MR. HAFETZ: Objection to form and
2 objection.
3 MR. EDELL: Sir?
4 A. I didn't quite follow you. What are
5 you saying with the chain of command?
6 Q. Apparently Mr. Cullman thought that he
7 thought the normal chain of command would require
8 Dr. Wakeham reporting to you on certain issues,
9 correct, instead of reporting directly to him?
10 MR. HAFETZ: Objection to form.
11 A. Doesn't say that in this memo.
12 Q. No. But it says that in one of the
13 earlier documents we looked at, you don't
14 remember that?
15 A. I remember the memo very well, I think
16 maybe he just didn't want to hurt my feelings. I
17 don't know why he said it.
18 Q. May be.
19 A. But I do not remember the
20 Leuchtenbergers.
21 Q. It would have been a major event, a

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1 MR. HAFETZ: Are you asking if that is
2 what the document says or if it refreshes his
3 memory.
4 MR. EDELL: I asked him to review the
5 document to see if it refreshed his memory with
6 respect to the Leuchtenbergers performing
7 inhalation studies respecting cigarette smoking
8 and cancer?
9 A. It does not.
10 Q. Did you read the whole thing?
11 A. No. I did not. I don't remember the
12 name. I don't remember that they did work for
13 us.
14 Q. I understand what you are saying, but
15 we as lawyers are entitled to ask you to review
16 things to see whether or not in its totality it
17 jogs your memory a little bit, all right?
18 A. Oh, sure.
19 Q. You said earlier, so maybe we can just
20 direct your attention to the specific portion,
21 the Leuchtenbergers concluded in the abstract of

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1 study, an inhalation study that reflected an
2 increased incidence in tumors in the animals
3 exposed to cigarette smoke versus those not
4 exposed to cigarette smoke, correct?
5 A. Mr. Edell, I remember a tremendous
6 amount of work being done on the proper kind of
7 smoking machine and what was the proper kind of
8 smoking machine and whether the Leuchtenbergers
9 in 1969 had one that we approved of or didn't
10 approve of, I have no recollection.
11 But the whole methodology of how you do
12 this sort of work I'm sure is of importance as
13 well.
14 Q. Sure. Anything wrong with the
15 Leuchtenbergers --
16 A. I don't know. It is quite possible
17 that the Leuchtenberger mice smoked in a manner
18 that was totally unnatural. I don't know the
19 answer to that.
20 Q. Is there anything that reflects that in
21 Dr. Wakeham's memoranda?

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1 their paper, a major point, this is a big issue,
2 mice inhaling fresh, whole smoke, or its gaseous
3 phase for a year or longer displayed a broader
4 spectrum and a higher frequency of tumors than
5 controls of the same strain. These findings
6 suggest that inhalation of fresh cigarette smoke
7 may enhance carcinogenesis in mice. Do you see
8 that, sir?
9 A. Yes.
10 Q. Is this the type of inhalation study
11 that you said is better than the mouse painting
12 study?
13 MR. HAFETZ: Objection to form.
14 Q. Sir?
15 A. Yes.
16 Q. And these results were being sent to
17 you by Dr. Wakeham, I guess, reporting consistent
18 with his understanding and, certainly,
19 Mr. Cullman's understanding as to the normal
20 chain of command, if you will, at Philip Morris,
21 correct?

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1 A. You can't tell from that memorandum.
2 Q. Is there anything in Dr. --
3 A. No, not in the memorandum, no.
4 Q. And you have no independent
5 recollection, so you have no idea whether there
6 were any flaws in the Leuchtenberger's research,
7 correct?
8 MR. HAFETZ: Objection.
9 A. No. No recollection.
10 MR. EDELL: Why don't we take a short
11 break? What time are we going to counsel?
12 MR. HAFETZ: We're going to break at
13 three.
14 VIDEO OPERATOR: We're going off the
15 record the time is 2:49 p.m.
16 (Discussion off the record.)
17 MR. EDELL: I mean the representation
18 was made to us that --
19 MR. HAFETZ: Friday we communicated or
20 Thursday or Friday we talked. I believe on
21 Thursday or Friday we communicated to your

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1 office.
2 MR. EDELL: That was communicated.
3 Right, and we took you at your word.
4 MR. HAFETZ: That we wished to break at
5 3 o'clock today.
6 MR. EDELL: I was led to believe that
7 this gentleman, because of his age and health was
8 too frail to continue any more than from 10 to 3
9 o'clock.
10 MR. HAFETZ: I don't know if the word
11 frail was used, but because of his age and
12 condition.
13 MR. EDELL: Is that right, sir?
14 THE WITNESS: Don't you see that I am
15 frail?
16 MR. EDELL: No. I don't see that you
17 are frail. I would be very happy to be in your
18 shape at 79, if I were to make it 79.
19 THE WITNESS: I hope you do.
20 MR. EDELL: I want to find out whether
21 or not it is a, very simply, it is a means be-

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1 which to breakup our examination or whether or
2 not it --
3 MR. HAFETZ: Wait a second.
4 MR. EDELL: Let me finish.
5 MR. HAFETZ: Wait a second. Wait a
6 second. Are you talking lawyer to lawyer?
7 MR. EDELL: I'm asking a question.
8 MR. HAFETZ: I'm interrupting the
9 question.
10 MR. EDELL: I'm questioning the
11 veracity of your representation, counsel.
12 MR. HAFETZ: We had an understanding
13 thought, with your office.
14 MR. EDELL: Based on representation.
15 MR. HAFETZ: Based upon representation,
16 that went to the age of the witness, that we
17 would break at three. I understood you were in
18 agreement with respect to that. If you are in
19 agreement, let's stop at 3 o'clock. If we are
20 not in agreement, you should have said so.
21 Thursday.

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1 MR. EDELL: No, counsel. We were in
2 agreement before I saw Mr. Goldsmith and before I
3 spent six hours with Mr. Goldsmith.
4 We were in agreement based upon what we
5 believed to be a good faith representation that
6 because of his age, he was not in sufficient
7 health to withstand the rigors of a deposition
8 that would go longer than 3 o'clock.
9 MR. HAFETZ: We made a good faith
10 representation to you.
11 MR. EDELL: I let you finish. I let
12 you finish, counsel, let me finish. I'm now
13 exploring the veracity of that representation
14 upon which you are relying, so that I can go to
15 the court, if necessary, and file an application
16 with respect to what we thought was a good faith
17 representation.
18 MR. HAFETZ: You want to go get on the
19 phone and call the court now?
20 MR. EDELL: Not until I speak with Mr.
21 Goldsmith.

1 MR. HAFETZ: We thought we had an
2 understanding. In fact, counsel have made other
3 appointments, including me, for this afternoon,
4 based upon what I thought was a representation
5 and agreement and an understanding between
6 lawyers that the deposition would not go beyond 3
7 o'clock.
8 It was not subject to your questioning
9 the witness at the deposition. It was an
10 agreement period. If I am incorrect on that,
11 please say so, and tell me who --
12 MR. EDELL: I will.
13 MR. HAFETZ: Excuse me. May I finish?
14 MR. EDELL: I thought you invited me to
15 say something.
16 MR. HAFETZ: May I finish?
17 MR. EDELL: Yes, you certainly may.
18 MR. HAFETZ: If not, I'm asking you who
19 in your office said it was subject to a condition
20 of Mr. Goldsmith. I would like to know that.
21 MR. EDELL: You know, I forgot, sir,

1 you are a New York attorney, therefore, we should
2 have asked you whether or not your representation
3 was accurate, upon which we relied.
4 Certainly our actions assumed that you
5 were being honest and forthright, and any
6 agreement by us to take any action or inaction,
7 based upon a representation by an attorney
8 assumes, until proven otherwise, that the
9 attorney is being honest with us. Okay.
10 So, yes, there was a condition
11 precedent to our -- let me finish. There was a
12 condition precedent to our agreeing to
13 accommodate this witness, and that was the truth
14 of your statements.
15 MR. HAFETZ: I tell you what
16 Mr. Edelman, I am from New York, you are from
17 Maryland.
18 MR. EDELL: I'm not from Maryland.
19 MR. HAFETZ: Wherever you are from,
20 please do not impugn the veracity of counsel.
21 MR. EDELL: You impugned it yourself.

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1 MR. HAFETZ: May I finish, please?
2 MR. EDELL: Don't raise your voice.
3 MR. HAFETZ: This deposition will end at
4 3 o'clock, pursuant, if you wish to continue it
5 beyond three, get on the telephone now and call
6 the judge.
7 MR. EDELL: After I ask the witness
8 some questions. Okay. It is not 3 o'clock now.
9 MR. HAFETZ: I will represent based upon
10 the understanding we had with your office, last
11 Thursday, I have made other commitments and
12 appointments this afternoon. No one advised me
13 from your office that continuation beyond 3
14 o'clock was subject to questioning of the
15 witness. Your office said it was depending upon
16 testing the bona fides of any representation that
17 was made.
18 Your office stated that the deposition
19 would end at 3 o'clock period. If you now are
20 withdrawing the agreement, please advise and we
21 can judge accordingly how to deal with you,

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Multi-Page™

Deposition of -Clifford H. Goldsmith
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1 Mr. Edelman.
2 MR. EDELL: Edell.
3 MR. HAFETZ: Mr. Edelman, obviously we
4 can't rely on your word.
5 MR. EDELL: You can.
6 MR. HAFETZ: Then we end at 3 o'clock.
7 MR. EDELL: I'm not going to do this
8 any more, until I establish a record.
9 Q. Mr. Goldsmith are you under a doctor's
10 care?
11 A. I don't think that is any of your
12 business. It has nothing to do with this.
13 Q. It has to do with whether or not you
14 are physically able to stand the rigors of a
15 regular day of deposition?
16 A. Mr. Edell, when you are 79 years old,
17 you will find out that you see doctors of all
18 kinds, colors or descriptions, a number of times
19 each year. If you call that being under a
20 doctor's care, I am under a doctor's care.
21 Q. Let me ask you a more pertinent

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1 Furthermore, with regard to any future
2 understanding with your office, we will be extra
3 careful now that we know the manner in which you
4 are dealing with representations you have made,
5 sir.
6 MR. EDELL: You should be aware from
7 now on whatever representations you make will be
8 challenged as to their veracity. You should be
9 very careful in exactly what language you use.
10 MR. HAFETZ: As will yours, too, as
11 demonstrated by your conduct in the last 15
12 minutes, based upon the backing off of a
13 representation your office made last week.
14 MR. EDELL: 3 o'clock, we're over. No
15 backing off.
16 MR. HAFETZ: You want the last word, you
17 can have the last word, Mr. Edelman -- Mr. Edell
18 if that's what you are trying to say.
19 MR. EDELL: Edell.
20 MR. HAFETZ: Nonetheless, you have
21 backed off of an understanding that you had last

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1 question okay?
2 A. Okay.
3 Q. Is there any reason why you can't sit
4 for a deposition for more than six hours?
5 A. Well, I think I certainly can sit as
6 sharp at age 79 after six hours of your very
7 competent interrogation than I was when I
8 started.
9 Q. I'm not as sharp as I was when I was
10 35. I'll take that as a given, but I still
11 usually go for eight to twelve hours a day. I'm
12 asking you for a candid answer.
13 A. I gave it to you.
14 Q. Are you unable, do you feel that you
15 are unable --
16 MR. HAFETZ: I want a continuing line of
17 objection to this.
18 MR. EDELL: You have it.
19 Q. Do you feel as if you are unable,
20 physically unable, mentally unable, to go through
21 a full day of depositions.

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1 week. Let the record be very clear on that.
2 MR. EDELL: I don't have any idea what
3 you are saying, you can say what you want.
4 MR. HAFETZ: You have every idea what
5 you are saying, sir, you made a representation
6 and you tried get out of it.
7 MR. EDELL: That we would stop at 3
8 o'clock. Is it 3 o'clock, counsel? Is it, yes
9 or no?
10 MR. HAFETZ: It is 3 o'clock, subject
11 only to your testing and trying to back off of
12 the representations.
13 Okay, Mr. Edell, we stand warned by
14 your conduct.
15 MR. EDELL: Have a good day, sir.
16 THE WITNESS: Thank you. You, too.
17 MR. HAFETZ: Are you in a position to
18 fix a date for the continuation.
19 MR. EDELL: We will do it on the
20 record, so there is no question as to what was
21 said by whom.

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1 A. It's not a question of being unable,
2 but maybe less qualified.
3 Q. Less sharp?
4 A. That's right.
5 MR. EDELL: I will make my application
6 to the court, counsel. It is 3 o'clock, we will
7 honor our representation, despite the
8 misrepresentation made.
9 MR. HAFETZ: I want to correct the
10 record right now. I don't like to have my
11 veracity impugned by anyone, including yourself.
12 No misrepresentation was made. I ask
13 you to behave yourself as a gentleman and a
14 lawyer and not make an ad homonym attack on the
15 veracity of another lawyer.
16 Maybe because you are piqued because
17 your office failed to follow proper questioning
18 or proper discussion with regard to whether the
19 deposition would be adjourned, don't take that
20 for any excuse perhaps for lack of competence by
21 your office to make any attack.

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1 VIDEO OPERATOR: You want this on the
2 video record?
3 MR. EDELL: No. That's not necessary,
4 unless we need the intonation, the decibel
5 level.
6 Next week okay?
7 MR. HAFETZ: No.
8 THE WITNESS: No. I don't think so.
9 THE WITNESS: This week is dead as far
10 as I'm concerned.
11 MR. HAFETZ: We have in mind October
12 27. Are you guys going to go two days with Len
13 Koslowski?
14 MR. GARNICK: I have no idea.
15 MR. EDELL: How about the 28th?
16 THE WITNESS: Wednesday is okay.
17 MR. EDELL: How about Thursday, the
18 29th?
19 THE WITNESS: Okay with me.
20 MR. EDELL: Okay.
21 MR. HAFETZ: I believe it is okay. Make

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1 that subject to notifying your office tomorrow.
2 I don't have my full calendar for October.
3 THE WITNESS: 29th is okay to me.
4 MR. HAFETZ: Did you just hear me,
5 Mr. Edell? Assuming my calendar is clear for the
6 29th.
7 I can, if you want to go off the record
8 a minute.
9 MR. EDELL: Let's do it, so we can just
10 nail it down.
11 THE WITNESS: Let's do it early.
12 MR. EDELL: Fine, we can go any time
13 you want. I prefer the morning to the
14 afternoon. Seriously, I do.
15 (Discussion off the record.)
16 MR. HAFETZ: The 29th is not good. How
17 is the 26th?
18 THE WITNESS: October?
19 MR. EDELL: I think the 26th was a
20 deposition. 20th?
21 MR. HAFETZ: 20th is -- we could start

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1 later. The 2nd?
2 MR. EDELL: The 2nd, I have Harris
3 deposition on the 2nd.
4 MR. HAFETZ: Going to be away the rest
5 of that week into the middle of the following
6 week.
7 MR. EDELL: How about Monday the 9th?
8 MR. HAFETZ: I will be getting back
9 sometime the 9th or the 10th.
10 MR. EDELL: 10th is fine.
11 MR. HAFETZ: I can do it the 11th. The
12 11 or 12th.
13 MR. EDELL: You want to do it in D.C.?
14 THE WITNESS: I certainly prefer not
15 to.
16 MR. GARNICK: You can't do it on the
17 28th? You want to push it off to the 26th?
18 MR. EDELL: That's your deposition of
19 Koslowski.
20 MR. GARNICK: What about the week of the
21 19th? I got Miller on the 21st, you guys want to

1 STATE OF MARYLAND SS:
2 I, E. D. SMITH, RPR-CRR, a Notary Public
3 of the State of Maryland, do hereby certify that
4 the within named, CLIFFORD GOLDSMITH, personally
5 appeared before me at the time and place herein
6 set out, and after having been duly sworn by me,
7 was interrogated by counsel.
8 I further certify that the examination was
9 recorded stenographically by me and this
10 transcript is a true record of the proceedings.
11 I further certify that the stipulations
12 contained herein were entered into by counsel in
13 my presence.
14 I further certify that I am not of counsel
15 to any of the parties, nor an employee of
16 counsel, nor related to any of the parties, nor in
17 any way interested in the outcome of this action.
18 As witness my hand and notarial seal this
19 8th day of October, 1998.
20 My commission expires
21 November 1, 1998 Notary Public

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1 push it off to the 20th or the 23rd?
2 MR. EDELL: 10th is fine for me.
3 MR. GARNICK: 20th is fine with me.
4 MR. HAFETZ: Hold on a second.
5 (Discussion off the record.)
6 MR. HAFETZ: The 20th at nine o'clock.
7 MR. EDELL: You got it.
8 (Examination concluded -- 3:05 p.m.)
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